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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1914

No. [redacted] 68

EDWIN J. MERCELIS, LEWIS F. GREEN, AND JUAN RAMON LORENZO DOMENECH, APPELLANTS,

vs.

JOHN A. WILSON, GEORGE W. JONES, E. B. WILCOX, WENCESLAO BORDA, JR., AND M. LE FRANC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

FILED NOVEMBER 29, 1912.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

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EDWIN J. MERCELIS, LEWIS F. GREEN, AND JUAN RAMON LORENZO DOMENECH, APPELLANTS,

vs.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 16, 1914.

1 In the District Court of the United States for Porto Rico.

Equity No. —.

EDWIN J. MERCELIS, LOUIS F. GREENE, and JUAN RAMON LORENZO DOMENECH, Plaintiffs,

vs.

LAWRENCE H. GRAHAME, GEORGE W. JONES, E. B. WILCOX, WENCESLAO BORDA, Jr., and M. LEFRANC, Defendants.

Bill of Complaint.

To the Honorable Judge of the District Court of the United States for Porto Rico.

Edwin J. Mercelis, a citizen of the United States of America and resident of New York; Louis F. Greene, a citizen of the United States of America and resident of Arecibo, district of Porto Rico; and Juan Ramon Lorenzo Domenech, a citizen of Porto Rico and resident of Arecibo, district of Porto Rico,—bring this their bill of complaint against Lawrence H. Grahame, a citizen of the United States and resident of San Juan, district of Porto Rico; George W. Jones, a citizen of the United States of America and resident of San Juan, district of Porto Rico; E. B. Wilcox, a citizen of the United States of America and resident of Arecibo, district of Porto Rico; Wenceslao Borda, a citizen of the United States and resident of Arecibo, district of Porto Rico, and M. Le Franc, a citi-
2 zen of the Republic of France and resident of Arecibo, district of Porto Rico.

I.

And thereupon your orators complain and say: That the said Edwin J. Mercelis, Louis F. Greene and Juan Ramon Lorenzo Domen-ch are the owners of the following described properties situated in the Barrios of Garrochales and Factor, respectively, Municipal District of Arecibo; one composed of 145.11-cuerdas of land, equivalent to 57-hectareas, 3-areas and 40-centiareas:

Bounded: on the North by the Caño de Tiburones; on the South by lands of H. H. King; C. A. Spinning; the Tropical Fruit Growers Association; E. B. Decker; A. M. White; Letitia M. McMurtry; on the East by lands of Francisco Acosta; Letitia M. McCurtry; A. M. White, and E. B. Decker; and on the West by lands belonging to the estate of Guillermo Cameron; lands of Jaime Hunter, Julia Pettingill, and E. B. Decker.

and the other composed of 156.91-cuerdas of land, equivalent to 61-hectares, 67-areas, and 25-centi-areas,—

Bounded: On the North by the Caño de Tiburones; on the West by lands of Casimiro Rivera; on the South by lands of M. M. Leighton; H. H. Miller; C. M. Quimby; W. B. Wigg formerly,

to-day belonging to H. D. Guernsey; H. Vanderwart; A. G. Savacool; H. M., G. K. and H. K. Cummings, and W. A. Potts; and on the East by lands of the estate of Guillermo Cameron.

II.

That the above-described properties are, as aforesaid, bounded on the north by a canal or channel known as the "Caño de Tiburones," which extends as aforesaid, along the northern boundary of these two properties for a distance of nearly two miles.

III.

That the Plaintiffs above-named, by themselves and by their grantors, have been the owners and possessors in full dominic of the above-described properties for more than 30 years, and that their dominion-title is inscribed in the registry of property for the district of Arecibo.

IV.

And your orators further aver that on or about the 11th day of February, 1908, the Defendant Wenceslao Borda, Jr., did
3 apply for and obtain from the Government of Porto Rico, by a joint resolution of both houses of the Legislative Assembly of Porto Rico, an extension for twenty-five years of the lease granted him by the Commissioner of the Interior of Porto Rico on the 15th day of December, 1907, allowing him to use, occupy and drain certain swamp lands in the districts of Arecibo and Manatí, part of which lands are situated near by and adjacent to the lands owned and peacefully occupied by these Plaintiffs, as aforesaid, in the barrios of Garrocheles and Factor.

V.

That on the 16th day of December, 1908, the said Borda, together with the other Defendants, being unable to locate with precision the boundary-line between the swamp lands aforesaid and the lands owned and occupied as aforesaid by these Plaintiffs, did by themselves, their agents and servants, and with force and arms, and against the express protest of these plaintiffs attempt to enter upon the premises of these plaintiffs, and did attempt to take forcible possession thereof; that being unable to take possession thereof, as aforesaid, the said Borda has called upon the said Lawrence H. Grahame, in his capacity of Commissioner of the Interior of Porto Rico; and the said George W. Jones, in his capacity of Assistant Commissioner of the Interior of Porto Rico; and the said E. B. Wilcox in his capacity of Fiscal of the district of Arecibo,—and has requested and required of them that they should, and they accordingly did, by use of force and arms, and by calling to their assistance certain members of the Insular police force of Porto Rico, and without any proceedings at law or in equity, determine the boundary-line between the property granted under said lease to the said Borda and the lands of these plaintiffs. He, the said Borda,

acting together with the other defendants herein named, have frequently attempted by force to drive stakes and run a line pretending the same to be the just and true boundary-line between
4 the said property granted under said lease to the said Borda and the property of these plaintiffs; and have attempted to seize and appropriate all running springs upon the lands of these plaintiss, pretending that the same were the property of and belonged to the said Borda under the terms of the said lease, and have attempted by force and arms and threats to prevent the plaintiffs from harvesting their crops of sugar-cane and from making use of the springs for the watering of their stock.

VI.

That the said Borda, acting together with the said Lawrence H. Grahame, George W. Jones, E. B. Wilcox and M. Lefranc, and their servants and agents, have been utterly regardless of the rights of these plaintiffs, and have attempted and are attempting to acquire forcible possession of the aforesaid, properties, and parts thereof, and are continuing to trespass upon the said lands of these plaintiffs, and are sending policeman for the purpose of attempting to take forcible possession of the lands of these plaintiffs, of the standing crops and wood and of the running springs of these plaintiffs, and on one occasion did, under a pretended charge, cause the arrest of the Plaintiff Louis F. Greene, for forbidding them to enter upon his property without an order of court, charging him with unlawful interference with public officers, and have in other ways acted in an unwarranted, unjustifiable, illegal and inexcusable manner, to the great prejudice of your orators.

VII.

And your orators further allege that if the unwarranted trespass and use of force and arms on the part of these defendants is allowed to continue that there is likely to be a disturbance of the peace and blood-shed and public riot: that there has already
5 been aroused in the neighborhood great indignation and public feeling has become so bitter that a riot has been at various times threatened: that your orators will be unable to harvest their crops of sugar-cane and to properly tend and care for their stock, and that they will be unable to care for the cattle of those people who have cattle in their care, and that the said Greene will not be able, on account thereof, to take care of his own ora-ge trees and the eight hundred acres of citrus groves of other people entrusted to his care under contract and for which he needs water from the springs that the said defendants are attempting and threatening to take from him.

VIII.

And your orators further aver that if they are unlawfully and forcibly deprived of the possession of their property they will be forced to proceed by numerous and vexatious suits at law to recover

what rightfully has belonged to them peacefully and without disturbance for a number of years, and they will be unable to perform their contracts with other people; that they will be irreparably damaged in their property, even if not deprived of their liberty or made to suffer from assaults committed upon them in the pretended name and authority of the People of Porto Rico.

IX.

And your orators further say that unless the defendants are enjoined and restrained by this Honorable Court from proceeding, either by themselves or in association with other- whose names are to the plaintiffs unknown, from taking forcible and unlawful possession of the premises, as aforesaid, crops and running springs, and from attempting, as aforesaid, to define a pretended boundary-line between the properties of these plaintiffs and the lands granted under lease to the said Borda, that the plaintiffs will be irreparably injured in their property and may be injured in their persons
6 and be deprived of their liberty, and that unless restrained by this Honorable Court the defendants will, under cover of an illegal and void pretended right, injure and damage the rights, property and interests of these plaintiffs, in a manner that is irreparable and in an amount which cannot be compensated by a suit at law.

X.

And your orators further allege that the matter in dispute herein exceeds, exclusive of interest and cost, the sum of Two Thousand Dollars ($2,000).

Wherefore your orators pray:

That it may please Your Honor to grant a writ of injunction, issued out of and in accordance with the rules and practice of this Honorable Court, to be directed to the said defenda-ts: Lawrence H. Grahame; George W. Jones; E. B. Wilcox; Wenceslao Borda, Jr., and M. LeFranc, to restrain them, their agents, servants, employees and confederates, from entering into or upon the lands and properties described belonging to these plaintiffs, and to restrain them from digging any ditches or trenches, or running any lines, or erecting any fences, upon the said properties, or in any wise from hindering or obstructing your orators in the free and unrestrained use of their properties, and the fresh water springs, grasses and wood-land situated thereon, and also that a restraining order to the same effect be issued until an application for an injunction can be heard, and that at the final hearing hereof such injunction may be made perpetual, and that plaintiffs have such other and further relief as to Your Honor may seem meet.

And your orators pray that these defendants may be required to produce in this Honorable Court all deeds or titles or other documents by which they claim or pretend to have any right to enter upon the lands of these plaintiffs as described herein.

7 May it please Your Honor to grant unto these plaintiffs a writ of sub-pœna, to be issued from the Clerk's Office of this Honorable Court, directed to the said Lawrence H. Grahame, George W. Jones, E. B. Wilcox, Wenceslao Borda and M. Lefranc, commanding them to be and appear herein upon a day to be named therein, and full, true and direct answer make to the plaintiffs' bill, but not under oath, answer under oath being waived; and these plaintiffs will ever pray.

(Signed) JOSEPH ANDERSON, JR.,
Attorney for Plaintiffs.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

On this 9th day of January, 1909, before me personally appeared Louis F. Greene, one of the above-named plaintiffs, who made solemn oath that he had read the foregoing complaint subscribed by him, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

(Signed) LOUIS F. GREENE.

Subscribed and sworn to before me this 9th day of January, A. D. 1909.

(Signed) JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.,
By A. M. BACON, *Deputy.*

Return on Service Writ.

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Writ on the therein-named Wenceslao Borda, Jr., together with copy of complaint by handing to and leaving a true and correct copy thereof with him personally at Arecibo in said district on the 13th day of January, A. D. 1909.

(Signed) H. S. HUBBARD,
U. S. Marshal,
" JOHN L. HAAS,
Deputy.

Return on Service Writ.

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Writ on the therein-named Laurence H. Grahame together with a copy of complaint by handing to and leaving a true and correct copy

thereof with him personally at San Juan in said district on the 11 day of January, A. D. 1909.

(Signed) H. S. HUBBARD,
U. S. Marshal.
" JOHN L. HAAS,
Deputy.

8 In the District Court of the United States for Porto Rico, in Chancery Sitting at San Juan.

No. 602, Equity.

EDWIN J. MERCELIS et al.
vs.
LAWRENCE H. GRAHAME et al.

Subpœna.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

The President of the United States, Greeting to Lawrence H. Grahame, George W. Jones, E. B. Wilcox, Wenceslao Borda, Jr., and M. LeFranc:

You are hereby commanded that you be and appear in the said District Court of the United States for Porto Rico, aforesaid, at the court room of said court in the city of San Juan on the first Monday in February, 1909, the same being the 1st day of that month, then and there to answer a certain Bill in Chancery exhibited against you in said court by Edwin J. Mercelis, Louis F. Greene and Juan Ramon Lorenzo Domenech and to do and receive what the said court shall have considered in that behalf, and this you are not to omit under penalty of five thousand dollars ($5,000).

Witness, the Hon. Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, this 11th day of January, A. D., 1909; and in the 133d year of the Independence of the United States of America.

Attest:

[SEAL.] (Signed) JOHN L. GAY, *Clerk*,
By A. M. BACON, *Deputy*.

Memorandum.

(Pursuant to Rule 12 Supreme Court, U. S.)

You are hereby commanded to enter your appearance in the above-entitled suit on or before the first Monday in February next, the same being the 1st day of said month, A. D., 1909, at the Clerk's office of said Court, pursuant to said Bill; otherwise the said bill may be taken pro confeso.

(Signed) JOHN L. GAY, *Clerk*.
" By A. M. BACON, *Deputy*.

[Endorsed:] District Court of the U. S. for Porto Rico. No. 602 Equity. Edwin J. Mercelis et al., vs. Lawerence H. Grahame et al. Subpœna in Chancery. Appearance day, First Monday in February, 1909. Answer day, First Monday in March, 1909. Filed, January 16, 1909. (Signed) John L. Gay, Clerk; (Signed) A. Aguayo, Deputy; Joseph Anderson, Jr., Complainant's Solicitor. Fees of Marshal $4.00. Expenses $1.50.

9 In the District Court of the United States for Porto Rico.

I, Rafael Guillermety, Clerk of the District Court of the United States for Porto Rico do hereby certify that the Amended Complaint prayed for in the Præcipe filed herein, under No. 3, in said Præcipe is not made a part of the Record, for the reason that the said Bill of Complaint was never amended and does not appear in the Records or files of this Court, in this Office.

[Seal United States District Court for the District of Porto Rico.]

RAFAEL GUILLERMETY, *Clerk.*

10 *Answer.*

(Filed April 9th, 1909.)

11 In the District Court of the United States for Porto Rico.

Equity, No. 602.

EDWIN J. MERCELIS, LOUIS F. GREENE, and JUAN LORENZO DOMENECH, Plaintiffs,

vs.

LAURENCE H. GRAHAME, GEORGE W. JONES, E. B. WILCOX, WENCESLAO BORDA, Jr., and M. LEFRANC, Defendants.

Answer.

Laurence H. Grahame, George W. Jones, E. B. Wilcox, Wenceslao Borda, Jr., and M. LeFranc, the defendants in the above entitled cause, now and at all times saving and reserving unto themselves all benefit and advantage of exception to the many errors, uncertainties imperfections and insufficiencies in the complainants' said bill of complaint contained, for answer thereto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

I.

Defendants do not know and have not been informed save by said bill of complaint, whether the said complainants are the owners of the properties situated in the Barrios of Garrochales and
12 Factor, of the Municipal District of Arecibo, described in paragraph I of the said bill of complaint, whether the said

properties have the boundaries and areas therein set out, nor whether the said plaintiffs and their grantors have been the owners and possessors in full dominio of the said properties for more than thirty years, and they therefore leave the plaintiffs to make such proof thereof as they may be advised is material and as they may be able to make.

II.

These defendants admit that on or about the 11th day of February, 1908, the defendant Wenceslao Borda, Jr., obtained from the Government of Porto Rico by a joint resolution of both Houses of the Legislative Assembly of Porto Rico, an extension for twenty-five years of the lease granted him by the Commissioner of the Interior of Porto Rico on the 15th day of September, 1907, allowing him to use, occupy and drain certain swamp lands in the districts of Arecibo and Manatí, part of which lands are situated near by and adjacent to lands claimed by the plaintiffs as aforesaid.

III.

Defendants deny the allegations contained in paragraph V., of plaintiffs' said bill of complaint.

IV.

Defendants deny the allegations contained in paragraph VI., of the plaintiffs' bill of complaint.

13 V.

Defendants further answering allege, that neither they or their agents and servants have at any time attempted to take possession of the property of the plaintiffs nor that they are attempting to so take possession of the said properties, and, on the contrary, they aver and charge the fact to be that the said plaintiffs are seeking to enjoin the said defendants from taking possession of certain swamp lands and springs thereon that are the property of The People of Porto Rico, and that for many years prior to the filing of this complaint and now are in the possession of The People of Porto Rico and its lessee the defendant Borda.

VI.

And these defendants deny that they have in any manner attempted or that they are attempting either by themselves or in association with others to take forcible and unlawful possession of the premises, crops and running springs of the plaintiffs wherewith they are by the said bill charged, and denying that the plaintiffs are entitled to any injunction or other relief whatever, without this, that any other matter, cause or thing in said complainants' said bill contained material or necessary to make answer unto, and not herein or hereby well and sufficiently answered, confessed traversed, and avoided or denied, is true to the knowledge or belief of the defend-

ants, submit for the reason hereinbefore recited and set forth that the plaintiffs are not entitled to any relief whatsoever against these defendants.

14 All of which matters and things the defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and therefore pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) J. H. BROWN,
Acting Attorney General of Porto Rico,
Solicitor and Counsel for Defendants.

15 (*Journal Entry, February 28th*, 1910.)

16 In the District Court of the United States for Porto Rico.

602, Equity.

E. J. MERCELIS et al.
vs.
L. H. GRAHAME et al.

This cause comes on for trial and come the complainants in their own proper persons and by their counsel Joseph Anderson, Jr., and come also the Respondents by one of their number, Wenceslao Borda, and come the respondents L. H. Grahame and E. B. Wilcox by their Counsel the Attorney General of Porto Rico, represented by J. Henri Brown, Assistant Attorney General, Harvey M. Hutchinson, and W. N. Landers. Whereupon counsel for the respondents request leave to file an amended answer in the cause. Counsel for the complainants objects to the filing of an amended answer at this late date, and for the further reason that it is not signed by any of the parties respondent. And the Court having heard read the proposed amended answer and feeling satisfied that the rights of complainants will not be prejudiced thereby, permits the same to be filed, and orders that the missing verification thereto be supplied during the noon hour on this date. To which action of the Court in so permitting the amended answer to be filed, counsel for complainants duly objects and excepts.

It is thereupon ordered that replication shall be considered as filed to the said amended answer, and it is further ordered
17 that the name of John A. Wilson, the present Commissioner of the Interior, be and it hereby is substituted for that of Lawrence H. Grahame as a party respondent and the issue as made regarding said Grahame shall apply to him.

Whereupon the witnesses for the parties are called, sworn and placed under the exclusion of the rule and the trial is proceeded with in open Court before the Court alone without the intervention of an Examiner or Master, and not being finished at the adjournment hour, the further hearing of the same is continued over until tomorrow morning.

18 *Amended Answer.*

(Filed Feb. 28, 1910.)

19 In the District Court of the United States for Porto Rico.

Equity, No. 602.

EDWIN J. MERCELIS, LOUIS F. GREENE, and JUAN LORENZO DOMENECH, Plaintiffs,

vs.

LAURENCE H. GRAHAME, GEORGE W. JONES, E. B. WILCOX, WENCESLAO BORDA, JR., and M. LEFRANC, Defendants.

Amended Answer.

Laurence H. Grahame, George W. Jones, E. B. Wilcox, Wenceslao Borda, Jr., and M. LeFranc, the defendants in the above entitled cause, now and at all times saving and reserving unto themselves all benefit and advantage of exception to the many errors, uncertainties, imperfections and insufficiencies in the complainants' said bill of complaint contained, for answer thereto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

I.

That as to whether or not said plaintiffs are the owners of the properties situated in the barrios Garrochales and Factor of the municipal districts of Arecibo, described in paragraph I of said bill of complaint, and as to whether or not the said properties have the boundaries and areas therein set out, these defendants have not sufficient knowledge or information on which to base a belief,
20 and therefore deny the same.

II.

Defendants deny the allegations contained in Paragraph II of Plaintiffs' bill of complaint, and aver and charge the fact to be that the Caño de Tiburones therein referred to, if the same be called for, as alleged, as a boundary for the several tracts of land described in said complaint, as aforesaid, is not a canal or channel, but a large body of swamp and partly submerged lands belonging to the Island of Porto Rico and now under lease to, occupied, and in process of being drained and put into cultivation by, the Defendant, Borda, and that the true boundary-line of all private lands adjoining said Caño de Tiburones is not the channel or deepest portion thereof, but such boundary-line is the true line of division between the unalienated portions of such public swamp lands and those of private ownership adjoining same, and can only be determined by a proper location of such dividing line without any reference whatsoever to any canal, channel or depth.

III.

That as to whether or not the said Plaintiffs and their grantors have been the owners and possessors in full dominion of the said properties described in the said bill of complaint for more than thirty years, as alleged in Paragraph III thereof, or for any length of time, and as to whether or not their title thereto is of record in the Registry of Property for the District of Arecibo, these Defendants have not sufficient knowledge or information on which to base a belief, and therefore deny the same.

21

IV.

Defendants admit that on or about the 11th day of February, 1908, the defendant Borda obtained from the Government of Porto Rico an extension for twenty-five years of the lease granted him by the Commissioner of the Interior of Porto Rico on the 15th day of November, 1907, allowing him to use, occupy and drain certain swamp lands in the districts of Arecibo and Manati, to wit, a parcel of land of six thousand cuerdas more or less generally known and designated as the "Cano ó Laguna de los Tiburones" and including all swamp lands not drained and cultivated belonging to The People of Porto Rico and situated within said districts; but as to whether or not any part of said swamp lands is situated nearby or adjacent to the lands in said complaint alleged to be owned and possessed by plaintiffs, leave plaintiffs to make such proof thereof as they may be advised is material and as they may be able to make.

V.

Defendants deny the allegations contained in paragraph 5 of plaintiffs' said bill of complaint, and aver and charge the fact to be that, pursuant to the terms and provisions of the lease under which the defendant Borda holds the said swamp lands as aforesaid, the Commissioner of the Interior of Porto Rico, at the expense of the said Borda, caused a survey to be made of the said Caño de Tiburones and of the lands adjoining same, and thereafter, to wit, on or about the 17th day of December, 1908, through his proper agents made formal delivery to the said Borda of the lands so leased and surveyed; that immediately after such delivery the said defendant Borda constructed a fence along the line located by the Government surveyors as aforesaid and enclosing the swamp lands so delivered to
22 him, and was, from the date of said delivery until the date of the temporary restraining order issued by mutual consent herein, and, except as affected thereby and by other orders of the Court herein, continuously has been and is now in the open, continuous and uninterrupted possession of the submerged and newly reclaimed lands inclosed by said fence; and that the said swamp lands, as defendants are informed and verily believe, have been in the undisputed possession and under the absolute ownership and control of the said Borda's lessors, The People of Porto Rico, from time immemorial as a part of the public domain.

VI.

Defendants deny the allegations contained in paragraph VI of plaintiffs' bill of complaint.

VII.

Defendants deny the allegations contained in Paragraph VII. of plaintiffs' bill of complaint, and aver and charge the fact to be that lands described in paragraph 1 of said complaint are situated in a locality of great rainfall and are well provided with water and springs amply sufficient for the watering of all stock and of all fruit trees kept or growing thereon; that no citrus trees are growing or could thrive upon the undrained lands delivered to the said Borda, and that such cane or other crops as are now standing thereon have been planted since the lease thereof as aforesaid and the beginning of drainage operations by the said Borda.

VIII.

Defendants deny the allegations contained in paragraph VIII. of plaintiffs' bill of complaint, and aver and charge the fact to be that plaintiffs have suffered no damages which may not be
23 readily measured and easily compensated or for which there is not a plain, speedy and adequate action at law.

IX.

Defendants deny the allegations contained in paragraph IX. of plaintiffs' bill of complaint, and aver and charge the fact to be that plaintiffs have sustained no injury that is not susceptible of accurate measurement and full compensation by a suit at law; and further that under and pursuant to the terms of the said contract of lease the said defendant Borda has paid as expenses of the survey of the said lands leased to him as aforesaid a sum approximating $6,000, and has, in order to comply with the terms of the said lease, made trips to the United States and to Europe for the purpose of securing a proper dredge for the draining of the said lands, and has purchased and secured such a dredge at heavy expense; that upon the 6th of January, 1908, the said Borda with a force of one hundred men commenced the work of draining the said lands by means of opening canals and drainage ditches, employing at the same time a large number of persons in the putting together and the setting up of the said dredge; that the said Borda began operations with the said dredge in June, 1908, opening up a canal or channel through the lands leased to him for the purpose of carrying off the water overlying same, and has kept the said dredge continuously in operation since that date with the exception of about forty days during which the same was disabled and under water; that the extension of the term of lease as aforesaid was made upon the express condition of forfeiture unless the said defendant Borda should, within the first fifteen years of the term thereof, have drained and put in con-

dition for cultivation at least one half of the leased lands as
24 shown by the official survey of the latter, and with a limitation of the said extension to the number of acres found to be so drained and in condition for cultivation at the expiration of the said period of fifteen years, and with the further proviso that the said lessee should pay all taxes assessed upon the lands so cultivated or in such condition for cultivation after the expiration of the said fifteen year period; that in attempting to comply with these and other onerous provisions of the said lease, and in overcoming the many obstacles and great difficulties encountered in carrying out the project undertaken in accordance with the terms of the said contract of lease the said defendant Borda has spent, and is continuing to expend, divers and large sums of money; and that any injury or damage that may inure to plaintiffs by reason of any acts alleged in said bill of complaint to have been, or to be about to be, committed, will be wholly disproportionate to the injury that would be inflicted upon the said defendant Borda and upon the public interests of the Island if the injunction prayed for in said complaint should be granted, or if the temporary restraining order already issued should be made permanent.

X.

Defendants deny the allegations contained in paragraph 10 of plaintiffs' bill of complaint, and aver and charge the fact to be that the lands leased to the said defendant Borda as aforesaid, and of which as to certain portions thereof plaintiffs allege themselves to be about to be deprived, were, in the condition in which the same were delivered to the said Borda, and are now, except in so far as the same have been drained and reclaimed by the said Borda, not susceptible of cultivation or other use, and are of little or no commercial value; and further, that the same are not susceptible of any injury
25 destructive of the plaintiffs' estate therein, if any, but are, on the contrary, being by degrees rendered suitable for cultivation and greatly benefited and enhanced in value.

XI.

And these defendants further answering allege that neither they nor their agents and servants have at any time attempted to take possession of the property of plaintiffs and that they are not now attempting so to take possession of the said properties, or of any of the premises, crops or running springs of the plaintiffs wherewith they are by the said bill charged, but, on the contrary, they aver and charge the fact to be that the said plaintiffs are seeking to enjoin lawful acts of ownership and to restrain the said defendants from exercising a rightful control over certain swamp lands and springs thereon the property of The People of Porto Rico, and in the lawful possession of the said defendant Borda; and denying that the plaintiffs are entitled to any injunction or other relief whatever, without this, that any other matter, cause or thing in said plaintiffs' said bill contained material or necessary to make answer unto, and

not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of the defendants, submit for the reason hereinbefore recited and set forth that the plaintiffs are not entitled to any relief whatsoever against these defendants.

All of which matters and things the defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and therefore pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) J. H. BROWN,
Acting Attorney General of Porto Rico,
and Solicitor and Counsel for Defendants.

26 (Signed) JOHN A. WILSON, *Defendant.*
(Signed) WENCESLAO BORDA, *Defendant.*

I hereby certify that the foregoing answer is, in my opinion, well founded in point of law.

Dated February 28, 1910.

(Signed) J. H. BROWN,
Acting Attorney General and Solicitor for Defendants.

27 *Journal Entry of March 1, 1910.*

28 In the District Court of the United States for Porto Rico.

#602, Equity.

E. J. MERCELIS et al.
vs.
LAWRENCE H. GRAHAME et al.

Come now the parties with their counsel as on yesterday and the trial of the cause is proceeded with, and at the conclusion of the complainants' case counsel for the respondents moves for a dismissal of the cause on the ground that the complainants have not shown themselves entitled to any equitable relief and have a complete and adequate remedy at law. And the Court having heard the arguments of counsel for and against the motion, takes the matter under advisement with the statement that it will render a decision in the premises at the opening of Court to-morrow morning.

29 (*Journal Entry, March 4th,* 1910.)

30 In the District Court of the United States for Porto Rico.

No. 602, Equity.

E. J. MERCELIS et al.
vs.
L. H. GRAHAME et al.

This day again come the parties and by their counsel as on yesterday, and the trial is proceded with, and thereafter at the conclusion of the testimony, counsel for the complainants requests and is granted leave to amend the prayer of the complaint so as to make the same conform to the proofs submitted during the trial and that the cause may be considered as an action to quiet title.

To which action of the Court in permitting said amendment to be made counsel for the respondents duly object and except.

The Court thereupon takes the whole cause under advisement with leave to counsel to file briefs on or before the 19th instant.

Complainants are required to present for filing, on or before the 12th instant, certain deeds referred to during the trial, but not then presented.

31 *Opinion of the Merits.*

(Filed Apr. 25, 1910.)

32 In the District Court of the United States for Porto Rico.

Equity, No. 602.

EDWIN J. MARCELIS, LOUIS F. GREENE, and JUAN RAMON LORENZO DOMENECH, Complainants,
vs.
LAURENCE H. GRAHAME et al., Defendants.

Opinion.

This is another of what have come to be known as the Caño de Tiburones cases. It is said that several similar cases have been, or are pending in the insular courts. The first of them with which we had to do in this court was that of Luis Rubert y Catala v. L. H. Grahame, et al., 4 P. R. Fed. 538, where a statement of the supposed facts surrounding the situation can be found. To repeat them in about the same form, they are about as follows:

From time immemorial there has existed along the north shore of the Island of Porto Rico parallel to the Atlantic Ocean, and only separated from it by a spit of land from a few hundred yards to about a mile wide, a slough or swamp known in early days as "El

Caño de Tiburones," and later as "El Caño or Laguna de Tiburones." The slough or swamp is about twelve miles long, reaching from near Barcelonneta on the east to Arecibo on the west. It was pretty well established by the evidence that there is within
33 it a channel or channels of open water for a short distance on the east end and for a slightly longer distance on the west end, but the evidence was in great conflict as to whether any such open water existed through the remaining seven or eight miles of the middle portion or body of it. In width this caño or swamp varies from several hundred yards to a mile and a half or more. It is almost entirely covered by what thenatives call "cortadera," which is a sort of swamp grass or flag six or eight feet high, the sides or edges of which plant, spear or grass have minute cutting teeth (hence the name "cortedera"), as well as on the back or spine. There are other sorts of swamp vegetation there also that will be referred to hereafter. The south shore of this caño or swamp is the only one with which we are concerned in this suit, and the evidence shows that its limits are quite indefinite in some places and well defined in others: and that its boundary meanders much, and that at places, points of the swamp vegetation extend some little distance from the main body south into the high and dry ground. It was also on evidence that there are small partially bare patches here and there in the swamp, and some small patches covered with shrubbery and bushes not of the swamp variety, the ground being slightly higher in such small spots, but it appears that these places occur almost entirely near the shores of the main swamp, and close to the actual dry land.

It was fully established in evidence that for several years past, and probably from time immemorial, this Caño de Tiburones and more or less of the swamp lands surrounding it have been considered as public land, which it is said was owned by the government in Spanish times, and which of course passed to the United
34 States under the Treaty of Paris, and was afterwards, under Sec. 13 of the Foraker Law, 31 Stats. 80, turned over to the Island to be administered by the local government for the benefit of the People of Porto Rico. The local legislature was given full power to legislate with regard to all such public property.

In December, 1907, the local legislature leased or gave a concession or franchise for all of the land embraced in this Caño or Laguna de Tiburones, and probably other lands in that vicinity to the respondent Wenceslao Borda, Jr., and his assigns. The concession was first given, as it is said, for a period of some fifteen years, but a year later, on the 19th of February, 1908, this concession, lease or franchise, whatever it is, was extended for an additional twenty-five years, or a forty year period in all. During this period of time the concessionee was given the right, and is probably obliged under certain restrictions and conditions in the contract contained, to occupy and drain the land, and is privileged to put to such profitable agricultural uses as may be deemed expedient, such as the planting of sugar cane and other crops. It was contemplated of course that this would involve large expenditures in the way of draining, dredging

and clearing the swamp and in cultivating the whole or such portions as could be reclaimed. It is developed that as soon as the matter of granting a concession to anybody for reclaiming these lands began to be agitated, the adjoining owners began to see to it that their boundary lines were properly marked and protected, and the immediate result, as it is said, was that quite a few conflicts regarding the same arose. The government records showed that this caño should contain between 6,500 and 7,000 acres, but only
35 4,200 acres were found to deliver to respondent Borda. This suit was originally brought against Laurence H. Grahame and others, the former being the then Commissioner of Interior of the Island, and under whose supervision the demarking of the caño or swamp and the putting of Borda in possession was carried on. At the trial the name of John A. Wilson, the new Commissioner of the Interior, was substituted for that of Mr. Grahame.

We are concerned with but two pieces of abutting property in this suit. A large blue print or plat that was made under the supervision of the Commissioner of the Interior of the Island, that demarks the supposed boundaries of the Caño or Laguna and sets forth the supposed boundaries of the adjoining owners of land, was introduced as Exhibit Q by complainants. The easterly piece of land of the two in dispute here is No. 72 on this plat, and the westerly one is No. 74. The first is owned by complainants Mercelis and Greene, and the second by complainant Juan Ramon Lorenzo Domenech, the latter having purchased it from the other complainant Greene. It is not certain how much of the northern portion of parcel No. 72 complainants contend that respondents are trying to take away from them, but as to the westerly one, No. 74, it was fully in evidence that respondents were trying to dispossess Domenech from practically his entire tract of 146 cuerdras.

A trial of the issues was had in open session by the Court itself without the intervention of an examiner or master, which occupied five or six days, beginning February 28, 1910. While the suit is against John A. Wilson as an individual, naturally the Island
36 being interested in delivering the land it claims to own, to the respondent Borda under its concession to him, the Attorney General's office represented him in the suit, and within the month following the trial fifty page carefully prepared briefs and arguments were filed by both sides, setting forth their respective legal contentions. Whilst it involved considerable labor to examine the record and these briefs, still it was interesting owing to the range counsel took in their views of the situation. However we have come to see the law of the case in a much simpler light than at first.

The bill as originally filed set out that complainants had crops planted upon portions of the land respondents were trying to deprive them of, and that upon each of the tracts in question there was a spring of water necessary for the watering of their stock, and that complainants conducted large dairy farms or ranches, and that it was not possible to get water from any other source, as none was available in that vicinity, and because respondents were proceeding to erect a fence that would shut them out from some of their crops,

that the injury would be irreparable. It was further alleged that respondents were there arbitrarily, under the alleged authority of the government of Porto Rico, and were accompanied by officers, policemen, etc., and that they had forcibly ejected complaina-ts from the latter's own property, and threatened to continue to keep them excluded, and did in fact arrest, and cause the arrest of complaina-ts for interfering with them regarding the possession of what complainants contend is their own property. They further alleged that the situation was such as that nothing could preserve the status quo as well as a court of equity by a writ of injunction until the Island should be either forced to become plaintiff or complainant
37 in a suit to quiet its own title, or these complainants be heard on the merits in this suit. Respondents have not conceded that this court of equity has jurisdiction, but strenuously contended, and so still contend, that there is a complete and adequate remedy at law. After giving the matter the fullest consideration, and because of the surrounding facts, all of which we have not set out here, and because of conditions existing in Porto Rico, which are more fully set forth in our opinion in the Hernandez v. Ochoa case, 4 P. R. Fed. 400 et seq., and in the Rubert y Catala v. Grahame case, Id. 538, supra, we concluded the suit was properly here, and we concluded that the remedy at law was wholly inadequate, because it would settle nothing and would involve such an examination of the Spanish law of waters and the laws regarding the public domain and the mode in which citizens acquired title to land from the Spanish Crown, as that no jury could intelligently pass upon the issues that would of necessity arise. When the proofs were all in, counsel for complainants moved for leave to amend the prayer of their bill so as to make it conform to the proofs and in effect constitute it a bill to quiet title. We granted the motion pro forma, provided after the examination of the whole case we should be of opinion that it was proper to do so. To this of course respondents objected, but now after having examined the whole case we are still constrained, particularly under section 392 of the civil code of 1902, to grant the motion and to consider the bill in that light, and will therefore proceed to pass upon the whole case upon the merits.

The two tracts that are in dispute here are situated two or three kilometers west of Barceloneta opposite the little station of
38 Citrus on the American Railroad They are parcels of land carved out of a collection of fruit farms known as the Cummings Plantations, which were started some few years ago on the south shore of the caño at that place. They are not contiguous because a tract of land known as parcel No. 73 on the plat referred to, belonging to the Cameron heirs, comes in between them. So far as the record shows, there appears to be no dispute as to this Cameron tract, that estate not claiming to own beyond the line demarked by the government for Borda as the south boundary of the Caño or Laguna de Tiburones. The width of parcel No. 72 from east to west is probably four or five hundred yards, and that of parcel No. 74 somewhat more.

A large amount of oral evidence was submitted, the same being

by engineers and others, intended to show the character of this Caño or Laguna de Tiburones. It is utterly in conflict between the respective sides on some of the main questions. For complaina-ts it was stren-ously contended that there is, or was until it was perhaps somewhat obscured by cloud bursts or cyclones, extending along or near the center of the whole of this caño or laguna, an open space or channel which is the north boundary of all of the tracts of land to the south that have the caño as the boundary call of their deeds on that side. On the other hand, it was contended, and the evidence tended to show that this caño is a well defined swamp with this cortadera and other swamp plants and grasses growing in it to the height of six or eight feet, and that it is, and always has been practically impossible for man (on foot) or livestock to cross it, and that there is not, and never was any center line or open water space in or about it, but that it is a flat continuous jungle or swamp
39 that looks a short distance away like a vast field of tall and scrubby grain. In such utter conflict was this evidence *as* that counsel for both sides requested and stipulated in open court that the Court itself should make a trip to the place in question and see its exact condition, the cost of the trip to be charged with the other costs of the case. Therefore, on Friday, April 8, 1910, in company with a deputy marshal, we proceeded to the station of Citrus and there spent four or five hours in examining the land in question and the swamp, as well as all the surrounding country, riding over the latter, where it was possible, on horseback. We were provided with field glasses, and in several places climbed trees growing at the edge of the morass so as to get a better view of the swamp or caño because it in fact proved to be utterly impossible for man or beast to enter it on foot. We found that the caño would be a lake if it had nothing growing in it, but that it in fact is a flat continuous swamp completely covered with water of varying depths in which is growing this cortadera, and with "cat-tails" and flags, and with several other kinds of swamp plants and grasses, such as wire grass, telescope grass and other aquatic growths, and that the ground under this swamp growth and water is mostly covered with a cross or mossy growth as soft as a sponge, and that the cortadera and flags and cat tails are as continuous as the growing grain on a wheat field, and six to eight feet high, and even more, and are apparently continuous for a mile and a half away to the north to the spit of high land intervening between the caño and the ocean.

Along the south shore there is an occasional small spot of
40 higher or purely dry land, and along the actual shore there is a more or less continuous line of trees, and the trees or these fruit farms (referred to in the evidence) come in places almost up to the actual edge of the swamp. From the amount of ditching done close to the edge of the swamp it is manifest that efforts have recently been made to plant malojilla and other grasses and crops on a few acres of it within the last year or two, but at the time we visited it, all of this had entirely disappeared and the ground had reverted to the swampy condition, the cortadera and other growths and the moss recovering itself as fast as time would permit. We saw the

place where respondents had attempted to put their fence, and in some places it certainly does encroach upon the dry ground which we think properly belongs to complainants, even though they have done considerable ditching to make that portion of the land available. The points of the swamp that run south into the hard or dry land, sometimes simply fade into the harder ground and it is quite difficult to demark the actual point of division, but it was manifest that the two springs in question were within and upon what complainants could in all fairness claim to be their ground. However, from the evidence submitted, both oral and written, which of course includes all the many deeds and other documents introduced, and from our own examination of the actual ground, we are satisfied that there is not, and never was any channel or open water in the center of this caño that is, or could be, or ever was used as a northern boundary by any of the land owners on the south. It is manifest also that at certain seasons of the year this southern edge of the caño or swamp is dryer than at other times because there were several ditches running north into the swamp land, although now
41 completely covered with cortadera, but it was manifest that these ditches could not have been dug except by men working to their knees in water unless the water was lower than when we saw it. In several places at the present edges of the swamp there are east and west ditches and these have standing water in them so near the surface as that to the north of those ditches the land is practically impassible, even where it has been cleared for a few yards, and absolutely so after an advance of a few yards to the north is made.

Complainants start their titles back many years, probably half a century from two original tracts of 480 and 420 cuerdas respectively, and from which they claim the two parcels in controversy, one of 156 cuerdas and the other of 145 cuerdas, are carved or segregated, and they claim that the north line of these tracts respectively runs many hundreds of yards out in this swamp or cortadera to this alleged open channel or center line, one of them, that north of parcel No. 74, having been surveyed a year or so ago, and, as it is said, stakes put out at the edge of this alleged open channel at the northeast and northwest corners of the tract. Personally we found it utterly impossible to go there to see if those stakes were in fact there, or to see if any such channel existed, but from our examination with the field glasses from the trees along the edge which we climbed for that purpose, we do not believe there is any such channel there, or that the same has ever been used by anybody as a boundary-line for land on the south, and that the testimony of the respondents' witnesses is true as to this. The waters of this swamp have no doubt recently receded somewhat, probably since respondent Borda
42 began to dredge, for he has a long ditch or two extending out of sight to the east and west something north of midway of the Caño, as could be seen with the field glasses from the trees in question, and from the surrounding hills, and evidence to that effect was also introduced at the trial.

A fact worth mentioning also is that no deed introduced in evidence by complainants describes the north boundary as anything

save the Caño de Tiburones until a year after the date of the original lease or concession to Borda by the Commissioner of the Interior of the Island and the Legislature, and several months after the extension thereof, and after the actual beginning of dredging operations, when the deeds under which these complainants claim, change the north boundary without apparent reason and describe the land as part swampy and part pasture lands. This occurs for the first time in the deed of Cummings Bros. to one Knight, who in a few days conveys to complainants Mercelis and Greene under the same description. But in all the older deeds for the larger tracts from which the disputed parcels were carved, the land is described as pasture land. The complainant Green transferred the 156 cuerdas of land carved out of parcel No. 74 only quite recently to complainant Domenech, and 146 cuerdas of it are attempted to be taken by the government as part of this Caño.

We have many times since occupying this bench, when considering land titles, endeavored without result to ascertain the system by which land in Porto Rico left the sovereign and became vested in the subjects of the King of Spain. We were quite familiar with the system in vogue regarding the many millions of acres involved in the land grants emanating from the Spanish and
43 Mexican governments in New Mexico previous to American occupation thereof, and were accustomed to have the actual Spanish grants (mercedes), expedientes and archives introduced in evidence as the source of all such titles, but have seen nothing of that kind here, yet it is said such expedientes exist. Thus we were not certain how the title to land in Porto Rico now held in private ownership left the sovereign. However, in this case respondents introduced in evidence a copy of what is known as the Real Cedula de Carlos III, which is a land cedula or royal edict of King Carlos III, made January 14th in the year 1778, or at least what is said to be a copy of it, which with a translation thereof is inserted at the end of this opinion. It seems that in that year, (two years after American independence) the King made up his mind to vest the holders of land in Porto Rico with a sort of conditional title thereto, and, as can be seen, instructed his Governor General to make an investigation in that regard and grant such titles to the people, and at the same time mentioned a grant of four leagues of land he had previously made to the Duque de Mahon, and required that it be located and segregated. This letter merced is the only positive royal grant of land made directly by the King himself that has so far been called to our attention since coming to the Island. We do not doubt though that there are probably many others in the insular archives. See a reference to the one referred to, in an opinion of the Supreme Court of Porto Rico in the case of the Baron Laurens d'Oiselay v. El Pueblo de Puerto Rico, 2 (Castro) Decisions de P. R. 103, and our own reference thereto in a case bearing the same title, ante page

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It will be seen from the terms of this Real Cedula that in a general sense the King of Spain at that relatively recent date did
44 not concede that at least the ordinary farmer or vassal in Porto Rico had any title to the land he was occupying, but

that the fee was still in the crown. It will also be seen that in and by the cedula it was intended to foster agriculture and cattle raising in Porto Rico, and only those were to be given title to their lands, or permitted to hold what they then were occupying, who should show themselves industrious, and who in fact made proper use of such lands. It will also be seen that there were certain waste lands apart from the agricultural and pasture lands and drinking places, that still remained to the King. It will also be seen that the King had in mind at the time the town of Arecibo, near which the lands we are now discussing are located, because by that very cedula he created it and other places into "villas".

The government of the Island in support of its lessee's claim to the possession of the land in controversy here did not produce anything such as would ordinarily be expected in the way of proofs, such as plats, maps, lists of public land, deeds, expedientes or other muniments of title, showing that the caño or laguna in question was in fact public land. In fact no really satisfactory evidence or lists of the public lands of the Island, as the same have been claimed by the government from time immemorial, was introduced, and counsel confessed there is nothing of that kind in the local archives; the only thing they could find being an old inventory or index which merely mentions the existence of this Caño or Laguna de Tiburones as public land. However, there was a good deal of evidence on both sides of the case as to this matter. On the one side many witnesses testified that for many years, as far back as they could remember—and some of them were well past middle life—they had known that the public owned land in that vicinity, or owned the Caño de Tiburones. While, on the other hand complainants introduced some witnesses who testified they had no knowledge and never heard of the government having any land there. However, the weight of the evidence on this subject is entirely with respondents, that the government has always been considered as owning the lands comprising the caño.

After an impartial consideration of the whole case, we are constrained to believe and to hold that this Caño de Tiburones in all its extent has been from time immemorial, save where specifically granted away by the King, or under his laws or order, and still is, public property, and that none of the deeds to land in that vicinity that use the Caño de Tiburones as a boundary include any of the swamp land in question, but that the boundary of all such private land ends at the edge thereof.

As to tract No. 74 which complainant Greene recently conveyed to complainant Domenech, we think the survey of the 156 acres in question out into the swamp was a pure act of aggression, and that none of the deeds upon which the same is claimed to be based, call for any of that land as being included within the description. We are of opinion that as time passed, this cortadera or these swamp growths spread and increased rather than that they died out or diminished or receded, and as the caño has no doubt from time immemorial been a drinking place for the live stock of the owners of abutting lands, all doubts as to ownership along the edges of the caño should be resolved in favor of the adjoining owners. This

is the reason we think the springs which are the main cause
46 of the quarrel, should be held to be the property of complainants, and further that wherever the line attempted to be located by respondent Borda or the government for him, encreaches upon the dry ground, or upon what certainly is complainants' land, the same should be removed and placed along the edge of the well defined actual swamp, and so well within the same as to leave a couple of yards thereof to complainants fronting on their land.

Therefore an independent surveyor will at once be named by the Court to proceed to the tracts of land in question, Nos. 72 and 74, as described in Exhibit Q for complainants, and he shall demark and stake out the boundary line between the parties as to each of the tracts as here intended, leaving the springs in each instance, together with not less than ten feet of ground north of the edges thereof at such places to the complainants respectively, and shall meander the boundary from such points respectively to conform to the actual swamp across the front of each tract and within the actual swamp as intended by this opinion.

It is our view that both parties are to blame for this litigation—the complainants for claiming more land than they are in fact entitled to, and respondents for doing exactly the same thing; hence each party will be required to pay their own costs respectively, and those of the surveyor to be so sent to the ground will be divided equally between them, and after the survey is brought in and approved, a decree will be prepared quieting complainants' titles respectively to the extent only in accordance with the views herein expressed, and in accordance with the survey thus to be made of the said north line in each case, as to the portion of land herein
47 held to belong to complainants respectively, and dissolving the injunction against respondents as to the balance of the land held by this opinion to be included in the Caño de Tiburones. The cause will be retained for all proper purposes until such final decree is approved, signed and entered.

(Signed) B. S. RODEY, *Judge.*

48 *Motion for Trial of Issues of Facts by Jury.*

(Filed June 13, 1910.)

49 In the District Court of the United States for the District of Porto Rico.

Equity, No. 692.

EDWIN J. MERCELIS et al., Plaintiffs,
vs.
LAWRENCE H. GRAHAME et al., Defendants.

Motion for Trial of Issues of Facts by Jury.

Now come the Plaintiffs in the above matter, by their Attorney Joseph Anderson Jr., and move the Court that

Whereas the decree in the above matter has not yet been submitted or signed, nor has the term passed at which the opinion of the Court was entered on the files and therefore the matter is still open for all purposes, and

Whereas, it is admitted by the Court in his opinion and generally by all parties to the suit that the matters of fact presented are very complicated and there is a direct conflict of the evidence as to the facts in this case.

That the whole matter be resubmitted for a rehearing and that the matters and questions of fact presented, be sent and generally be submitted to a jury for determination, at such a time as there may be a jury sitting in this Court.

San Juan Porto Rico June — 1910.

(Signed) JOSEPH ANDERSON,
Attorney for the Plaintiffs.

50 *Journal Entry June* 13, 1910.

51 In the District Court of the United States for Porto Rico.

No. 602, Equity.

EDWIN J. MERCELIS et al.
vs.
LAWRENCE H. GRAHAME et al.

In this cause counsel for all parties being present, the matter of the motion for a re-hearing now on file comes on to be heard, and the Court being fully advised in the premises overrules and denies the same, to which action Joseph Anderson, Jr., of counsel for plaintiffs then and there duly objects and excepts. Immediately thereafter said same counsel files a motion for trial of certain issues of fact by a jury even though the cause has already been decided,—because the decree has not actually been entered, and the Court at once hears counsel in that regard, and being fully advised also denies and overrules said motion to which action of the Court in like manner on behalf of plaintiff said counsel objects and excepts.

Thereupon counsel for defendants presents a draft of final decree in the premises which is then and there submitted to counsel for plaintiffs and he offering no objection to the same as to its form or substance, save as aforesaid to the entry of any final decree, the same is thereupon signed by the Court and sent to the files, and which said final decree is in words and figures as follows, that is to say:

52 *Motion for a Rehearing.*

(Filed June 3rd, 1910.)

53 In the District Court of the United States for Porto Rico.

Equity, No. 602.

EDWIN J. MERCELIS et al., Plaintiffs,
vs.
LAWRENCE H. GRAHAME et al., Defendants.

Motion for a Rehearing.

Now comes the Plaintiffs herein—Edwin J. Mercelis, Louis F. Green, and Juan Ramon Lorenzo Domenech—by their attorney Joseph Anderson, Jr., and moves the Court that:

Whereas, an opinion has been handed down in the above matter which decides certain matters not submitted to the Court and leaves undecided certain other matters which were submitted, and makes findings of fact and law not in accordance with the proof and the law of the case; and,

Whereas, there has been no decree entered herein as yet, and no findings of fact and law have been prepared by either party for signature,—a re-hearing be had in the premises, so that the matters left undecided herein may be properly determined by this Court in view of the objections made by these plaintiffs. This motion is made upon the following grounds:

(1), That although this was a bill in Equity asking for an injunction, the injunction was neither granted or denied.

(2), That although this was not a bill which was intended definitely to determine property rights between the parties, the
54 Court nevertheless has in a manner determined those property rights and has rendered it impossible for the plaintiffs to bring up in any other forum and upon such further evidence as they may have the question of the ownership of the property in dispute.

(3), Because the Court failed to consider the conclusive evidence of plaintiffs in regard to their ownership and possession of the land in controversy.

(4), Because the Court failed to take into consideration the evidence of plaintiffs as to their northern boundary being a well defined line which formerly existed there, but, on the contrary, and without any definite evidence to guide it, determined arbitrarily what should be the northern boundary of the line in dispute.

(5), Because the Court determined the question upon evidence concerning the topographical condition of the premises to-day rather than the undisputed and positive evidence of the condition at former times of the land in question as to a well determined northern boundary.

(6), Because the Court without any stipulation between the parties without the knowledge of the parties, of its own initiative visited the places and determined the matter with reference to what was seen by him there, which was not and should not have been considered as showing anything of the real situation at the time the plaintiffs through their grantors originally had possession of the premises—the question in dispute not being the condition of the land to-day, but the condition of the land thirty, forty or fifty years ago.

55 (7) That the Court in visiting the place in question, as appears from his own opinion, climbed trees for the purpose of viewing the situation, and admittedly by his opinion the ground was so covered with a high growth that he could not see the condition of the ground under the high growing plant, which is known as "cortadera."

(8) That the Court, having visited the place, refused to walk out upon the alleged swampy land, on the ground that he could not do so, although the person who accompanied him, a resident of the neighborhood but not a party to this suit, agreed to take him and conduct him to the so-called "Caño de Tiburones," which the plaintiffs claim as their northern boundary.

(9) That this same person, not a party to this suit, has since on more then one occasion been on foot to a point which the plaintiffs claim as their northern boundary without even wetting his feet and with no difficulty whatever, and that he could have done so the day the Court was with him at the place.

(10) That the Court failed to take into consideration the maps of the Board of Public Works hanging in the offices of the Marshal of the Court.

(11) That the Court failed to take into consideration the fact that the defendants proved absolutely no title to the land in question, and decided, insofar as the matter was decided at all, entirely upon a seeming presumption that the Court considered lay in favor of the Government.

(12) That the Court failed to take into consideration the recorded dominio titles of plaintiffs and the verbal evidence of the

56 change in the condition of the ground as being sufficient reason for a change in the descriptions of the grounds in the chain of titles.

The plaintiffs further ask this re-hearing on the ground that new, important, substantial and conclusive evidence has been discovered which is presented at the former trial would undoubtedly have resulted in a different decision, but which the plaintiffs had not discovered, and could not with diligence have discovered, for the other hearing of this matter. This new evidence consists of the following:

(*a*) Documentary evidence appearing in an old case in the District Court of San Juan showing that, as a matter of fact, and for many years, the Caño de Tiburones was an open water channel through which boats and lighters used to pass in front of the property in dispute and for the purpose of transporting cane from the centrals along the route to the town and harbor of Arecibo. There

is evidence of this at the former hearing, verbal evidence by an old resident of the vicinity, but the Court apparently gave it little weight, inasmuch as he held directly contrary to the evidence as given, although the same was not contradicted.

(*b*) Evidence of a witness who has lived for a long time in the vicinity, who will testify that ever since a boy until the cyclone he was accustomed to go through the so-called Caño de Tiburones in boats and to fish there, and that he remembers the Caño perfectly and the clear open channel bounding the property in dispute and remembers when and how it became filled up. There was evidence of this character given before, but the Court paid little attention to it inasmuch as the Court definitely determined there never
57 was any such a channel, although the evidence of such a channel was not contradicted, and he based his opinion apparently upon what he saw by climbing a tree in the vicinity many years after the time the plaintiffs claim the channel became filled up.

Plaintiffs especially object to the statement in the opinion of the Court, as follows:

"We were provided with field-glasses, and in several cases climbed "trees growing at the edge of the morass so as to get a better view "of the swamp or caño, because it in fact proved to be utterly im-"possible to enter it on foot. We found that the Caño would be a "lake if it had nothing growing in it, but that it in fact is a flat, "continuous swamp, completely covered with water of varying "depth in which is growing this cortadera and with cat-tails and "flags and with several other kinds of swamp plants and grasses, "such as wire grass, telescope grass, and other aquatic growths, and "that the ground under the swampy growth and water is mostly cov-"ered with a cross or mossy growth as soft as a sponge, and that the "cortadera, flags and cat-tails are as continuous as the growing "grain on a wheat field and 6 to 8 feet high, or even more, and are "apparently continuous for 10½ miles away to the north to the "spit of the high land intervening between the Caño and the "Ocean.

Plaintiffs objects to this statement in the opinion on the ground that it is contrary to the evidence in the case; that the Court had no right to judge of what was the condition of long years ago from what he found there, and if the conditions were such as the Court says they were from the place he saw them he would have been utterly unable to have determined what the conditions were.

Plaintiffs further state that on several occasions since that time other people have passed across the premises characterized by the Court as "a flat continuous swamp, completely covered with
58 water" in ordinary shoes without finding any water except in water-holes and without even wetting their feet.

Therefore, the plaintiffs respectfully ask for a rehearing on the ground that the opinion of the Court, and any decree based thereon, will be directly contrary to the law and the facts as clearly proven in this case and the conditions existing at the premises to-day.

(Signed) JOSEPH ANDERSON, JR.,
Attorney for Plaintiffs.

Louis F. Green being duly sworn, deposes and says: that he is one of the Plaintiffs herein; that he has read the foregoing motion and the facts therein stated are true, except those stated on information and belief and as to those he believes them to be true.

(Signed) LOUIS F. GREENE.

Subscribed and sworn to before me by Louis F. Green, a bachelor, of legal age, resident of Arecibo, Porto Rico, farmer and to me personally known this 2nd day of June, 1910.

[NOTARIAL SEAL.]

(Signed) LOUIS F. GREENE.
Notary Public.

Notaria De Monserrat, Affidavit No. 854.

59 *Renewed Motion for a Rehearing.*

(Filed June 18, 1910.)

60 In the District Court of the United States for Porto Rico.

Equity, No. 602.

EDWIN J. MERCELIS et al., Plaintiffs,
vs.
LAURENCE H. GRAHAME et al., Defendants.

Renewed Motion for a Rehearing.

Now comes the plaintiffs herein, by their attorney, Joseph Anderson, Jr., and renew their motion for a rehearing, and say:

I.

That heretofore, to wit, on or about the 6th day of June, 1910, the plaintiffs, prior to the signing of the decree in the above-entitled case, did make a motion for a re-hearing, which motion contained eleven grounds and various allegations as to new evidence having been discovered, the whole motion occupying some six pages of typewritten matter.

II.

That this motion was filed during the Term in which the opinion of the Hon. Bernard S. Rodey, Judge of the above Court, was rendered, but after his departure from Porto Rico for the United States.

III.

That thereafter the said Bernard S. Rodey made a hasty trip to Porto Rico, for the purpose of signing certain matters on
61 appeal which necessitated his presence in Porto Rico for a few days, and that during those few days spent in Porto Rico

this motion for a re-hearing, at the instigation of the defendants, was set on the 10th day of June, 1910, for a hearing which was to be and was held on the 13th day of June, 1910.

IV.

That the points raised in the motion for a re-hearing were such, so numerous, and involved to such an extent the material rights of the plaintiffs and an intimate consideration of the evidence that the said Judge of this Court could not possibly in the time allowed him for the numerous duties he had to perform between the said Friday, June 10th, and the said Monday, June 13th, have given the same the attention that they required.

V.

That on the said 13th day of June, 1910, the said Judge of this Court, from the Bench and upon the presenting of this motion, without any further consideration thereof except such consideration as he might have given it in chambers between the 10th and the 13th of June, 1910, and without any but the very briefest argument, overruled said motion and thereupon at once signed the decree herein.

VI.

That it now being during the same Term, and the decree being still open to review, the plaintiffs, herein respectfully ask of this Honorable Court that the motion for a re-hearing heretofore filed be reconsidered, that the matter be investigated, and a time set for a thorough and complete argument and presentation of the matter leisurely and deliberately, by this Court.

62

VII.

That furthermore the decision and decree as rendered herein have deprived, without due process of law and without consideration for the rights of individuals in the premises, these plaintiffs of their property and of their right to proceed against their grantors in the premises.

Respectfully submitted:

(Signed) JOSEPH ANDERSON, JR.,
Attorney for the Plaintiffs.

UNITED STATES OF AMERICA,
District of Porto Rico,
City of San Juan, ss:

Joseph Anderson, Jr., being duly sworn, deposes and says: that he is the attorney for the plaintiffs herein, and that the facts alleged in the foregoing motion are within his peculiar knowledge, and that the facts set forth are true to the best of his information and belief.

(Signed) JOSEPH ANDERSON, JR.

Subscribed and sworn to before me this 17th day of June, A. D. 1910, by Joseph Anderson, Jr., resident of San Juan, attorney-at-law, to me personally known.

(Signed) JOHN L. GAY,
Notary Public, Clerk, Dist. Court of U. S. for P. R.

63 *Journal Entry of June* 13, 1910, *Showing Order Overruling Motion for Rehearing.*

64 In the District Court of the United States for Porto Rico.

No. 602, Equity.

EDWIN J. MERCELIS et al.,
vs.
LAWERENCE H. GRAHAME et al.

In this cause counsel for all parties being present, the matter of the motion for a re-hearing now on file comes on to be heard, and the Court being fully advised in the premises overrules and denies the same, to which action Joseph Anderson, Jr., of counsel for plaintiffs then and there duly objects and excepts. Immediately thereafter said same counsel files a motion for a trial of certain issues of fact by a jury even though the cause has been decided,—because the decree has not actually been entered, and the court at once hears counsel in that regard, and being fully advised also denies and overrules said motion to which action of the court in like manner on behalf of plaintiff said counsel objects and excepts.

Thereupon counsel for the defendants presents a draft of final decree in the premises which is then and there submitted to counsel for the plaintiffs and he offering no objection to the same as to its form or substance, save as aforesaid to the entry of any final decree, the same is thereupon signed by the Court and sent to the files, and which said final decree is in words and figures as follows, that is to say:

65 *Journal Entry of January* 11, 1911.

66 In the District Court of the United States for Porto Rico.

No. 602, Equity.

EDWIN MERCELIS et al.
vs.
LAWERENCE H. GRAHAME et al.

The motion by plaintiffs for a re-hearing of this cause is heard, and the court upon due consideration of same, denies said motion.

67 In the District Court of the United States for Porto Rico.

Equity, No. 602.

EDWIN J. MERCELIS, LOUIS F. GREENE, and JUAN RAMON LORENZO DOMENECH, Plaintiffs,

vs.

LAURENCE H. GRAHAME, Originally, now JOHN A. WILSON, GEORGE W. JONES, E. B. WILCOX, WENCESLAO BORDA, Jr., and M. LEFRANC, Defendants.

Final Decree Quieting Title.

This cause came on to be heard upon the 28th day of February 1910, before the Honorable Bernard S. Rodey, Judge presiding, and was heard in open session by the Court without the intervention of an Examiner or Master, upon the bill as amended at the trial, the name of John A. Wilson, the present Commissioner of the Interior, being substituted for that of L. H. Grahame, his predecessor in office, answer of defendants as last amended, replication of complainants considered as filed, exhibits, agreements of parties, proofs and other proceedings in the cause, and arguments of counsel.

And it appearing that the bill in equity in the above entitled cause as amended after trial of the issues to conform to the proofs upon motion of counsel for complainants duly granted, seeks to obtain a permanent injunction against respondents restraining them, their agents, servants, employees and confederates from entering into or upon the lands and properties described in said bill, and from digging any ditches or trenches, or running any lines, or erecting any fences upon the said properties, or in anywise hindering or obstructing complainants in the free and unrestrained use of said properties, and of the fresh water springs, grasses and wood-

68 land thereon; to discover all deeds and titles under which respondents claim the right of entry upon said lands, to ascertain, establish and determine the boundaries thereof, and to quiet plaintiffs' title thereto, with prayer for such other and further relief as to the Court may seem meet; the said lands being more particularly described in the said bill of complaint as follows, to wit:

A property composed of 145.11 cuerdas of land, equivalent to 57 hectares, 3 are-s, and 40 centiares: bounded on the North by the Caño de Tiburones; on the South by lands of H. H. King, C. A. Spinning, the Tropical Fruit Growers Association, E. B. Decker, A. M. White, Letitia M. McMurtrie, on the East by lands of Francisco Acosta, Letitia M. McMurtrie, A. M. White, and E. B. Decker, and on the West by lands belonging to the estate of Guillermo Cameron, lands of Jaime Hunted, Julia Pettingill and E. B. Decker.

Another, composed of 156.91 cuerdas of land, equivalent to 61 hectares, 67 are-s, and 25 centaires, bounded on the North by the Caño de Tiburones; on the West by lands of Casimiro Rivera on the South by lands of M. M. Leighton, H. H. Miller, C. M. Quinby,

W. B. Wigg, formerly, to-day H. D. Guernsey, H. Vanderwart, A. G. Savacol, H. M. G. K. and H. K. Cummings, and W. A. Potts, and on the East by lands of the estate of Guillermo Cameron.

And because it appears to the Court that the Caño de Tiburones called for in the title deeds of complainant as the northern boundary of the two tracts of land above described is not in fact a canal or channel, as claimed by complainants, but a slough or swamp some 12 miles long and varying in width from several hundred yards in its narrower portion to one and a half miles in others, such as that lying opposite the two tracts of land above described, and that none of the deeds to land in that vicinity that call for the Caño de Tiburones as a boundary include or were ever meant to include any of the swamp land in question, but that the boundary of all such private land ends at the edge of the said slough and therefore that the true northern boundary of the two tracts of land described in complainant's bill of complaint is not, as claimed by plaintiff, a canal or channel, but rather the true line of demarkation and division between the said swamp lands and the dry or pasture lands referred to in older deeds under which complainants derive title, which
69 said line of division has been duly run, located and established under proper orders and direction of the Court by the surveyor Camilo Gonzalez, designated and appointed for that purpose by the Court upon May 3, last, and as shown by the report presented by him, approved by the Court and duly filed upon the 18th day of the same month, and as the same appears upon the two plats, one for each of the two tracts described in complainants' bill of complaint, mentioned in said report and thereto attached as part thereof;

And because it appears to the Court that the said slough or swamp known as the Caño or Laguna de Tiburones is in fact, and has been from time immemorial, except as to such portions thereof as may have been specifically granted away by the King, public property, a portion of the public domain of the Spanish Crown, and which, of course, passed to the United States under the Treaty of Paris, and was afterwards, under Section 13 of the Foraker Law, 31 Stats. 80, turned over to the Island to be administered by the local government for the benefit of the People of Porto Rico, the local legislature being given full power to legislate with regard thereto as in the case of all such public property; and further that the defendant Borda is in the rightful, lawful, possession of the said Caño de Tiburones, under concession or lease from the Insular Government, as more fully appears from the opinion dated and filed herein upon the 25th day of April 1910, which said opinion is here adopted for the more particular description of both the said Caño or Laguna de Tiburones and the two tracts of land described in plaintiffs' bill of complaint, as aforesaid;

And because it appears to the Court that at no time have any of the complainants herein been seized with a beneficial interest in any portion of the lands lying to the north of the boundary line so run, located and established, and constituting the Caño de Tiburones, as aforesaid, but that the same is now, and has always been, the property of the People of Porto Rico, and their predecessors in interest,

and that the defendant Borda is in the rightful and lawful
70 possession thereof under lease from the Insular Government, as aforesaid; and further that none of the defendants are now, or have ever been, seized with any beneficial interest in any portion of the real estate lying to the south of said bondary line, located and established as aforesaid, and included in the descriptions contained in complainants' chain of title as set forth in the said bill of complaint, and that complainants are entitled to the relief prayed for in their bill as to the quieting of their title up to but not beyond the boundary line so run and established, and that the People of Porto Rico are equally entitled to a similar quieting of their title to the said swamp lands lying to the north of the said boundary line, as aforesaid:

Now therefore, it is by the Court, upon consideration of the premises above set forth, ordered, adjudged and decreed as follows, to wit:

That the line run, located and established by the official surveyor designated and appointed for that purpose, as aforesaid, as the same appears from the report of the said surveyor and the two plats accompanying same, herein duly approved by the Court, as aforesaid, be and the same is hereby fixed, established and finally determined as the true northern boundary of the two tracts of land described in complainants' bill of complaint, and the true southern boundary of that portion of the Caño de Tiburones lying adjacent to the two last mentioned properties;

That plaintiffs are entitled to have the cloud caused by the claim of rightful/ possession and title on the part of the defendant Borda and the Commissioner of the Interior, as the representative of the said Borda's lessor, the People of Porto Rico, to a portion of the lands described in complainants' bill of complaint lying to the south of and along the said boundary line removed from their title; and the said defendants and their privies in estate or blood are hereby perpetually enjoined from setting up title to any portion of the said real estate to the south of the said boundary line as herein-
71 above fixed, established and determined by reason of the ownership of the said Caño or Laguna de Tiburones by the People of Porto Rico, or by reason of the said lease from the Insular Government to the defendant Borda;

That defendants are likewise entitled to have the cloud caused by the assertion of ownership on the part of complainants to a portion of the said swamp or slough lying to the north of the said boundary line as fixed, established and determined, as aforesaid, removed from the title of the lessor of Borda, the People of Porto Rico, represented herein by the Commissioner of the Interior, as aforesaid, and the said complainants and their privies in estate or blood are hereby perpetually enjoined from setting up title to any part or portion of the said swamp or marsh lands known as the Caño de Tiburones, as aforesaid, lying to the north of the said boundary line as so fixed and determined;

The Court is of the opinion, and so decrees, that the People of Porto Rico, took nothing by Section 13 of the Foraker Law, as

aforesaid, to the south of and that complainants took nothing by the chain of title introduced in evidence to the north of the said boundary line as fixed, established and determined, as aforesaid.

The temporary restraining order herein issued upon the 16th day of January 1909, is hereby dissolved as to all that portion of the land in controversy lying to the north of the boundary herein established as against the defendants and as to that portion thereof lying to the south of said boundary as against complainants.

Both complainants and respondents will be entitled to a copy of this decree as a muniment of title upon payment by them to the Clerk of his fee for a certified copy.

For the better description and identification of the several tracts of land herein referred to, and of the boundary line herein established fixed and determined, the opinion of the court filed herein upon the 25th day of April 1910, as aforesaid, and the report presented by the surveyor, approved by the Court and duly filed on the 18th day of May 1910, together with the two plats—one for
72 each of the two tracts described in complainant's bill of complaint mentioned in said report, as aforesaid,—are now here adopted and expressly made part hereof.

Complainants and defendants will each pay their own costs, respectively, and those of the official survey will be divided equally between them, for all of which an execution will issue.

Dated at San Juan, Porto Rico, June 13, 1910.

(Signed) B. S. RODEY, *Judge.*

73 In the District Court of the United States for Porto Rico.

No. 602.

E. J. MERCELIS et al.
vs.
L. H. GRAHAME et al.

Extracts from the Record.

(At the Close of Complainants' Case.)

Mr. BROWN: I move to dismiss on the ground that the court is without jurisdiction.

The COURT: That will be overruled and leave will be given complainants to amend their bill.

Mr. LANDERS: Will Your Honor give us an exception to the overruling of the motion?

The COURT: I will entertain a motion at the end for them to amend their bill as they might deem proper so as to quiet their title.

Mr. HUTCHINSON: Will Your Honor give us an exception then.

Mr. ANDERSON: For the purposes of the record, I object to the introduction of any testimony on behalf of the defendants on the

ground that at the beginning of this suit their answer was not signed by any of the parties, and therefore we were entitled to a decree pro confesso and an ex parte hearing.

The COURT: Overruled.

Mr. ANDERSON: Note an exception, if Your Honor please. I might consider that objection made to every witness who is called?

The COURT: Yes, you may have that noted.

74 (At the Close of the Whole Case.)

Mr. ANDERSON: I move that we be allowed to amend the prayer of our bill to conform to the proofs, and to quiet our title against these respondents and against Mr. Borda as the claimed lessee of the government of Porto Rico.

The COURT: Do you object to his doing this, Mr. Brown?

Mr. BROWN: Of course we do. It is absolutely an unprecedented thing. It doesn't require argument.

The COURT: The Court wholly disagrees with you.

Mr. BROWN: Your Honor will allow us an exception?

The COURT: Yes, sir. I will put it this way: The motion is granted if the Court should be of opinion, after the briefs are filed, that the relief to be granted will be proper.

74½ *Stenographer's Certificate.*

I, Arthur J. Harvey, Official Stenographer of the District Court of the United States for Porto Rico, hereby certify that the foregoing extracts from the record in the case of E. J. Mercelis et al. v. L. H. Grahame et al. are true and correct.

ARTHUR J. HARVEY,
Official Stenographer.

75 *Petition of Appeal.*

(Filed May 22nd, 1912.)

76 In the District Court of the United States for Porto Rico.

Equity, No. 602.

Bill of Injunction.

EDWIN J. MERCELIS, LEWIS F. GREEN and JUAN RAMON LORENZO DOMENECH, Plaintiffs,

vs.

LAWRENCE H. GRAHAME, GEO. W. JONES, E. B. WILCOX, W. BORDA, JR., and M. LEFRANC, Defendants.

Petition of Appeal.

The Plaintiffs, Edwin J. Mercelis, Lewis F. Green, Juan Ramon Lorenzo Domenech, conceiving themselves aggrieved by the final de-

cree heretofore made by this Court in this cause on the 13th day of June, 1910, whereby it was ordered, adjudged and decreed that the equity of said cause was and is with the defendants and against the plaintiffs; and that the defendants are entitled to have the cloud caused by the assertion of ownership on the part of plaintiffs to a portion of the so-called swamp lying on the north of the so-called boundary line as established and determined by the decree removed from the title of the lessor of one of the defendants and from the title of the People of Porto Rico represented herein by the Commissioner of the Interior; and whereby it is ordered that the plaintiffs and their privies in estate and blood are perpetually enjoined from setting up the title to any part or portion of the said so-called swamp lands known as the Cano de Tiborones lying to the north of
77 the said boundary line so fixed and determined; and whereby the right of the plaintiffs to have their title to the property adjudicated by a Court of law; do hereby appeal from said order and decree of the 13th day of June, 1910, to the Supreme Court of the United States for the reasons specified in the assignment of errors to be filed herein, and they pray that this, their petition of appeal, may be allowed, and that a transcript of the record, proce-dings and papers upon which said order and decree was made, duly authenticated, may be sent to the said Supreme Court of the United States.

San Juan, Porto Rico.
May 22, 1912.

(Signed) JOS. ANDERSON, JR.,
Solicitor for said Plaintiffs.

78 *Order Allowing Appeal.*

(Filed May 29, 1912.)

79 In the District Court of the United States for Porto Rico.

#602, Equity.

EDWIN J. MERCELIS et al.
vs.
LAWRENCE H. GRAHAME et al.

Order Allowing Appeal.

The Plaintiffs, Edwin J. Merceiles, Luis F. Green, Juan Ramón Lorenzo Domenech by their counsel, having on the 22nd; day of May, 1912, filed their petition of appeal in this cause, it is now hereby ordered, that an appeal to the Supreme Court of the United States from the final decree made and entered herein on June 13th, 1910, be, and the same hereby is, allowed to said Plaintiffs; and that a certified transcript of the record and all proceedings therein upon which said order was made, be transmitted to said Supreme Court of the United States.

It is further ordered, that the bond on appeal be fixed at the sum of Five Hundred Dollars ($500.00), conditioned for the payment of costs as provided by law.

Dated—San Juan, P. R. this 29th day of May, A. D. 1912.

[SEAL.] (Signed) PAUL CHARLTON,
Judge.

80 *Assignment of Errors.*

(Filed June 18, 1912.)

81 In the District Court of the United States for Porto Rico.

Equity, No. 602.

EDWIN J. MERCELIS et al.
vs.
LAWRENCE H. GRAHAME et al.

Assignment of Errors.

Now come the Plaintiffs, Edwin J. Mercelis, Louis F. Green, and Juan Ramón Lorenzo Domenech, Plaintiffs and Appel-ants in the above entitled cause, and assign the following as errors committed by the Court aforesaid in the course of the proceedings in said cause in this Court:

I.

That the Court erred in determining the question of title upon a bill for an injunction, and in ordering a survey and quieting the title for the Defendant to property for which they had no title.

II.

That the Court erred in suggesting and allowing the Plaintiffs to amend their bill to conform to the proof after the trial of the issues, and the prayer of their bill in such a way as to change the nature and character of the bill from a bill for an injunction to a bill to quiet title.

III.

That the Court erred in not determining, either for or against Plaintiffs, the question of the injunction, and in not sending the question of title to a Court of Law, to be determined by a Jury.

IV.

That the Court erred in holding and deciding that it had jurisdiction over and concerning the question of title against these Plaintiffs, and for the Defendants, and in not confining itself to the
82 question of granting or refusing an injunction.

V.

That the Court erred in holding and deciding that equity had, and has jurisdiction to decide a question of title in a suit of this kind when the Plaintiffs were out of possession, and the Defendants in possession, it being clearly a case for determination by a suit at law.

VI.

That the Court erred in determining the question of title upon a bill for an injunction in a suit at equity, thus depriving the Plaintiffs of the right of trial by jury and depriving them of their right of "due process of law."

VII.

That the Court erred in quieting the title of the Government of Porto Rico to certain properties to which it had no title when the Government was not a party to the suit and did not in any way appear and ask for the quieting of its title.

VIII.

That the Court erred in determining this cause from a personal inspection of the geographical conditions of the ground, instead of upon the evidence introduced at the trial of the case, because the conditions of the ground at the time of the personal inspection of the Court could have no possible determining influence upon the conditions of the ground at the time the Plaintiffs claimed they acquired title.

IX.

That the Court erred in determining a boundary-line between the Plaintiffs' and Defendants' land solely upon the question of the quality of the soil from his own personal inspection, without taking into consideration that the quality and condition of the
83 ground at the time of the said personal inspection had not, nor has, nor could have had, any bearing or relation whatsoever to the real title of these Plaintiffs as derived many years before.

X.

That the Court erred in so determining this matter and taking jurisdiction in equity over a cause of this kind, thus depriving the Plaintiffs of their right to a trial by jury of the question of title.

XI.

That the Court erred in holding and deciding that the Defendants were the owners and entitled to have their title quieted to the land described in the complaint and claimed by Plaintiffs.

XII.

That the Court erred in holding and deciding that the Plaintiffs are not the owners and are not entitled to the possession of the land described in the complaint.

XIII.

That the Court erred in not considering as sufficient muniments of title the duly recorded dominion title of Plaintiffs.

XIV.

That the Court erred in not holding and determining that the duly recorded dominion titles of Plaintiffs were sufficient and proper titles against the claimants of a lessee under the People of Porto Rico without title of any kind or description.

XV.

That the Court erred in overruling the motion for a rehearing of this cause, for the reasons set forth in the motion for a rehearing made before the entering of the final decree herein.

XVI.

That the Court erred in making and entering its final decree in this cause in favor of the Defendants, and against Plaintiffs and Appellants.

84 Wherefore, these Plaintiffs pray the Hon. the Supreme Court of the United States, to examine and correct the errors assigned, and for the reversion of the final decree of said District Court of the United States for Porto Rico entered in the above entitled cause, or so much thereof as adjudges and determines that the Plaintiffs are not the owners and not entitled to the possession of the lands described in the bill of complaint.

And, *is* in duty bound, they will ever pray.

(Signed) JOSEPH ANDERSON, JR.,
Attorney for Plaintiffs in Error,
Plaintiffs in Lower Court.

85 *Affidavit as to Amount in Controversy.*

(Filed June 17th, 1912.)

86 In the District Court of the United States for the District of Porto Rico.

In Equity, No. 602.

EDWIN J. MERCELIS et al.
vs.
LAWRENCE H. GRAHAM et al.

Affidavit.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Louis F. Green, being duly sworn, on his oath says: that he is one of the Plaintiffs and one of the Appellants in the above entitled cause; that he is familiar with, and for several years has been familiar with, the land in dispute in the above entitled case; that he knows the value thereof, and the value of the rents and profits thereof, from his personal familiarity therewith, and that the said lands exceeds in value the sum of $5,000.00, and that the matters referred to in the said suit, and which are in controversy in this suit, and the amount so in controversy, greatly exceeds the sum of $5,000.00, exclusive of interest and costs.

(Signed) LOUIS F. GREEN.

No. Register of the affidavit, 344.

Subscribed and sworn to before me by Luis F. Greene, bachelor, of age, to me known, this 15 day of June, A. D., 1912.

(Signed) S. B. PALMER,
Notario Publico.

One Excise tax seal of twenty five cents.
One Notarial Seal.

87 Know all men by these presents, That we, Louis F. Greene of Citrus, Porto Rico, as principal, and Manuel Pazn Urdaz and José Clivillés Valencia, as sureties, are held and firmly bound unto Wenceslao Borda, Jr., John A. Wilson and M. LeFranc in the full and just sum of Five Hundred ($500) dollars, to be paid to the said Wenceslao Borda, Jr., John A. Wilson and M. LeFranc, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twelfth day of June, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a session of the District Court of the United States for Porto Rico, in a suit depending in said Court, between Louis F. Greene, Juan Lorenzo Domenech and Edwin J. Mercelis, plaintiffs and John A. Wilson, Wenceslao Borda, Jr., M. LeFranc, George W. Jones, E. B. Wilcox, and Lawerence H. Grahame defendants, a final decree was rendered against the said Louis F. Greene, Edwin J. Mercelis and Juan Ramon Lorenzo Domenech and the said Louis F. Greene, Edwin J. Mercelis and Juan Ramon Lorenzo Domenech having obtained a citation and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said John A. Wilson, Wenceslao Borda, Jr., M. LeFranc, George W. Jones, E. B. Wilcox and Lawerence H. Graham citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Louis F. Greene, Edwin J. Mercelis and Juan Ramon Lorenzo Domenech shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) LOUIS F. GREENE. [SEAL.]
(Signed) MANUEL PAZ URDAZ. [SEAL.
(Signed) JOSE CLIVILLES VALENCIA. [SEAL.]

Sealed and delivered in presence of:
(Signed) S. B. PALMER,
(Signed) ANTONIO JEANNOT,
(Signed) ANDRES BONETA.

Approved by:
(Signed) PAUL CHARLTON,
Judge of the District Court of the United States for Porto Rico.

UNITED STATES OF AMERICA,
District of Porto Rico, City of Arecibo, P. R., ss:

Mr. Manuel Paz Urdaz of Arecibo and Mr. Jose Clivilles Valencia of Arecibo, P. R. being each separately sworn declares and says: That each is a property holder and taxpayer in the District of Porto Rico and that each is worth more than One thousand dollars ($1000) over and above all his debts and liabilities subject to execution.

(Signed) MANUEL PAZ URDAZ,
(Signed) JOSE CLIVILLES VALENCIA.

No. Affidavit 343.

Sworn to and subscribed by Mr. Manuel Paz Urdaz and Jose Clivilles Valencia both to me personally known this twelve day of June 1912, before me.

(Signed) S. B. PALMER,
[NOTARY'S SEAL.] *Notary Public.*

25c Excise stamp.

6—384

88 In the District Court of the United States for Porto Rico.

Equity, No. 602.

EDWIN J. MERCELIS et al.
vs.
LAWRENCE H. GRAHAME et al.

Citation.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to George W. Jones, E. B. Wilcox, Wenceslao Borda, Jr., M. LeFranc, and John A. Wilson:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within sixty days of the date of this writ, pursuant to an order allowed and appeal duly entered and of record in the office of the Clerk of the District Court of the United States for Porto Rico in that certain cause in equity in that Court, No. 602, wherein Edwin J. Mercelis, Louis F. Greene and Juan Ramon Lorenzo Domenech are Appellants, and you are Appellees, to show cause, if any, why the decree rendered against the said Appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Paul Charlton, Judge of the District Court of the United States for Porto Rico, and the seal of said Court, this 13 day of June, A. D., 1912, and of the Independence of the United States the One Hundred and Thirty-sixth.

[Seal United States District Court for the District of Porto Rico.]

PAUL CHARLTON,
Judge of the District Court of the U. S. for P. R.

Service of a copy of the foregoing citation is hereby admitted this 14 day of June, A. D. 1912.

WOLCOTT H. PITKIN, JR.,
Attorney General of P. R.
J. H. BROWN,
Attorney for Appellee Borda.

89 *Præcipe for Transcript of Record.*

(Filed June 18th, 1912.)

90 In the District Court of the United States for Porto Rico.

Equity, No. 602.

EDWIN J. MERCELIS et al., Plaintiffs,
vs.
LAWERENCE H. GRAHAME et al., Defendants.

To the Clerk of the above-mentioned Court:

You will please prepare transcript of record in this cause, to be filed in the Office of the Clerk of the Supreme Court of the United States under the appeal heretofore perfected to said Court and include in said transcript the following pleadings, proceedings, orders and papers on file, to wit:

(1) Original bill of complaint.
(2) Summons and return.
(3) Amended bill of complaint.
(4) Original Answer.
(5) Journal Entry of the 28th day of February, 1910, containing a motion for leave to file amended answer.
(6) Amended answer.
(7) Journal Entry of March 1st, 1910, containing overruling motion to dismiss on ground that there is no equity.
(8) Journal Entry of March 4th, 1910.
(9) Opinion of Court on merits.
(10) Motion that certain matters of fact be submitted to the Jury.
(11) Journal Entry of June 13th, 1910.
(12) Motion for re-hearing.
(13) Renewed motion for re-hearing.
91 (14) Journal entry showing order overruling motion for re-hearing.
(15) Journal entry of January 11th, 1911, showing order overruling renewed motion for re-hearing.
(16) Final Decree.
(17) Extract from Stenographer's notes showing the motion made for leave to amend bill of complaint to conform to proof (which extract was filed with the brief in this cause on the motion to strike bill of review from files).
(18) Petition on Appeal.
(19) Order allowing appeal.
(20) Assignment of Errors.
(21) Affidavit as to amount in controversy.
(22) Bond on Appeal.
(23) Citation and return thereon.
(24) Copy of præcipe for transcript of record.

(Signed) JOSEPH ANDERSON, JR.,
Attorney for Plaintiffs.

Received copy of the foregoing præcipe for transcript this 18 day of June, 1912.

(Signed) J. H. BROWN,
Attorney for Defendant Borda.

Copy of the above document received June 18, 1912.

(Signed) WOLCOTT H. PITKIN, JR.,
Attorney General of Porto Rico.

92 In the District Court of the United States for Porto Rico.

#602, Equity.

EDWIN J. MERCELIS et al.
vs.
LAWERENCE H. GRAHAME et al.

I, Rafael Guillermety, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing typewritten pages numbered from 1 to 92, inclusive, to be a true and correct copy of certain proceedings in the above entitled cause, as the same remain of record and on file in my office, as called for by the præcipe filed by counsel for the appellant, copy of which præcipe is attached hereto.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, this 30th day of July, A. D. 1912.

[Seal United States District Court for the District of Porto Rico.]

[SEAL.] RAFAEL GUILLERMETY,
Clerk, U. S. Dist. Court for P. R.

Endorsed on cover: File No. 23,434. Porto Rico, D. C. U. S. Term No. 384. Edwin J. Mercelis, Lewis F. Green, and Juan Ramon Lorenzo Domenech, Appellants, vs. John A. Wilson, George W. Jones, E. B. Wilcox, Wenceslao Borda, Jr., and M. LeFranc. Filed November 29th, 1912. File No. 23,434.

SUPREME COURT, U. S.
FILED
APR 20 1914
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. [redacted]38

EDWIN J. MERCELIS, LEWIS F. GREEN, AND JUAN RAMON LORENZO DOMENECH, APPELLANTS,

vs.

JOHN A. WILSON, GEORGE W. JONES, E. B. WILCOX, WENCESLAO BORDA, JR., AND M. LE FRANC, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF FOR APPELLANTS.

JOSEPH ANDERSON, JR., AND
HECTOR H. SCOVILLE,
Attorneys for Appellants.

(23,434)

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 384.

EDWIN J. MERCELIS, LEWIS F. GREEN, AND JUAN RAMON LORENZO DOMENECH, APPELLANTS,

vs.

JOHN A. WILSON, GEORGE W. JONES, E. B. WILCOX, WENCESLAO BORDA, JR., AND M. LE FRANC, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF FOR APPELLANTS.

Statement of the Case.

This action was begun by the plaintiffs (appellants) in the District Court of the United States for Porto Rico, as set forth in the record herein, in the month of January, 1909, by the filing of a bill in equity, in which it was alleged that the plaintiffs (appellants) were the owners of two certain parcels of land situated in the barrios of "Garrochales" and "Factor," in the municipal district of Arecibo, Porto Rico,

and comprising, both together, three hundred and two and 2/100 (302.02) cuerdas (practically equivalent to acres) of land, both of which pieces are bounded on the north by the so-called Caño de Tiburones, which extends along the northern boundary of the two properties for a distance of nearly two miles.

It was alleged by the plaintiffs (appellants) that they, by themselves and by their grantors, had been the owners and possessors in full dominion of the properties described in the complainant for more than thirty years, and that their dominion title was inscribed in the Registry of Property for the District of Arecibo, Porto Rico.

It was further alleged that the defendant Wenceslao Borda, Jr., having obtained a lease from the Commissioner of the Interior of Porto Rico of certain swamp lands situated in the vicinity of the two pieces of land in dispute, secured an extension for twenty-five years from and after the eleventh day of February, 1908, of his said lease, allowing him to occupy and drain said swamp lands in the districts of Arecibo and Manati and adjacent, as aforesaid, to the lands owned by these plaintiffs (appellants) in the said barrios of Garrochales and Factor.

It was further alleged that on the sixteenth day of December, 1908, that the defendant Borda, together with the other defendants, being unable to locate with exactness the boundary line between the said swamp lands and lands of the plaintiffs (appellants) did arbitrarily run a line, supposedly a boundary line, between the said swamp lands claimed by defendant Borda to be lands which had been leased to him by The People of Porto Rico, and the property of these plaintiffs, and in so doing that he shut these plaintiffs off from certain running springs, and also prevented them from harvesting certain sugar cane that they had planted upon their land, and took possession of a large part of their holdings.

It was further alleged in the complaint that this running of a line and establishing a so-called boundary line was a trespass which would cause irreparable injury to the plaintiffs; that there had been an arrest made of one of the plaintiffs on account of his interfering with the officials who were running the pretended boundary line, and that the whole situation was such, in the district, that there was liable to be a disturbance of the peace, bloodshed and public riot, and that if the plaintiffs were unlawfully and forcibly deprived of the possession of their property as set forth, there would be numerous suits at law for the recovery of their property; that they would be unable to perform their contracts with other people, for the care of cattle and fruit groves, and that there would be irreparable injury to them, and a writ of injunction was prayed for

> "to restrain them (defendants) their agents, servants, employees, etc., from entry into or upon the lands and properties described belonging to the plaintiffs, and to restrain them from digging any ditches or trenches, or running any lines, or erecting any fences upon the said properties, or in any wise from hindering or obstructing (plaintiffs) in the free and unrestrained use of their properties, and the fresh-water springs, grasses, and wood-land situated thereon, and also that a restraining order to the same effect be issued until an application for an injunction can (could) be heard, and that at the final hearing hereof such injunction be made perpetual, and that plaintiffs have such other and further relief as * * * may (might) seem meet."

To this bill the defendants (appellees) interposed an answer (Record, p. 7), and trial was begun on the twenty-eighth of February, 1910, at which time, and over the objection of the counsel for the plaintiffs, an amended answer was filed (Record, p. 10), which was objected to on the ground that it came too late, and for the further reason that it was not signed by any of the parties defendant (Record, p. 9).

In this answer (paragraph V) the defendants allege that

> "pursuant to the terms and provisions of the lease under which the defendant Borda holds the said swamp lands as aforesaid, the Commissioner of the Interior of Porto Rico, at the expense of the said Borda (one of the defendants) caused a survey to be made for the said Caño de Tiburones and of the lands adjoining same, and thereafter, to wit, on or about the seventeenth day of December, 1908, through the proper agents made formal delivery to the said Borda of the land so leased and surveyed; that immediately after such delivery, the said defendant Borda constructed a fence along the line located by the Government surveyors as aforesaid, and enclosing the swamp lands so delivered to him, and was, from the date of said delivery until the date of the temporary restraining order, issued by mutual consent herein, and except as affected thereby and by other orders of the court herein, *continuously was and is now in the open, continuous and uninterrupted possession of the submerged and newly reclaimed lands enclosed by said fence;* and that the said swamp lands, as defendants are informed and firmly believe, have been in the *undisputed possession* and under the absolute ownership and control of said Borda's lessors, The People of Porto Rico, from time immemorial as a part of the public domain."

The evidence shows, as appears from the opinion of the court (beginning at Record, p. 15), that the land in dispute, the land which the plaintiffs claim, was in part enclosed and included by the fence constructed by the defendant Borda, as appears in paragraph V of the amended answer (Record, p. 11), and therefore a clear *dispute* as to title and ownership of the lands which the plaintiffs claim to own was raised by the pleadings, though the only *issue* that was raised by the pleadings was whether or not the plaintiffs were entitled to a restraining order and a perpetual injunction against the defendants requiring them not to trespass upon the property, which they claimed was theirs, as appears from paragraph

XI of the amended answer (Record, p. 13), wherein the defendants say that

> "further answering (they) allege that neither they, nor their agents and servants have at any time attempted to take possession of the property of plaintiffs, and that they are not attempting to take possession of the said property or of any of the premises, crops or running springs of the plaintiffs, wherewith they are by the said bill charged, but, on the contrary, they aver and charge the fact to be that the said plaintiffs are seeking to enjoin lawful acts of ownership and to restrain the said defendants from exercising a rightful control over certain swamp lands and springs thereon, the property of The People of Porto Rico and in the lawful possession of the said defendant Borda, *and denying that the plaintiffs are entitled to any injunction or other relief whatever.*" * * *

After several days of trial upon the facts, before the court, and after the court had considered the matter for some time he handed down the opinion which is found at page 15 of the record, from which it appears that the court, in part at least, arrived at its decision (Record, p. 19) from his own personal inspection of the properties, though not taking into account that the conditions, at the time of the trial, were very different from those of thirty and more years ago and especially prior to the great hurricane of 1899, and upon that opinion, and in accordance with the last paragraph thereof, a final decree (Record, p. 31) was entered to the effect that the plaintiffs were entitled to have the cloud, caused by the claim on the part of the defendant Borda and the Commissioner of the Interior, as a representative of Borda's lessor, The People of Porto Rico, to a portion of the lands described in plaintiffs' complaint, removed from their title and enjoining the defendants from interfering with the ownership of said portion (which portion was a very small fraction of the whole).

That the defendants

> "are likewise entitled to have the cloud, caused by the assertion of ownership on the part of the appellants to a portion of the said swamp or slough lying to the north of said boundary line as fixed and established as aforesaid, removed from the title of the lessor of Borda, *The People of Porto Rico*, represented herein by the Commissioner of the Interior as aforesaid, and the said plaintiffs and their privies in estate or blood are hereby perpetually enjoined from setting up title to any part or portion of the said swamp or marsh lands known as the Caño de Tiburones as aforesaid, lying to the north of the said boundary line as so fixed and determined.
>
> The court is of the opinion and so decrees that *The People of Porto Rico* took nothing, by section 13 of the Foraker Law as aforesaid, to the south of, and that the appellants took nothing by the chain of title introduced in evidence, to the north of the said boundary line as fixed, established and determined as aforesaid."

It is thus seen that the court, upon a bill solely for an injunction, defined a boundary line, quieted the title of the plaintiffs (appellants) to a very small portion of the land they claimed and quieted the *title of The People of Porto Rico* (in no manner a party to this action), to the major portion of the land the plaintiffs claimed they owned, and determined what land belonged to The People of Porto Rico, under section 13 of the Foraker Law, when The People of Porto Rico was in nowise a party to this suit (Record, pp. 33-34), and that the court determined from a personal inspection of the premises what was the northern boundary of the land the plaintiffs claimed they owned, notwithstanding the fact, as appears from his opinion, that the conditions at the time the court inspected the premises may have been entirely different from the conditions at the time the northern boundary of the said land was established.

After the handing down of the opinion as aforesaid, the plaintiffs, on the thirteenth of June, 1910, and prior to the entering of the decree, and during the term at which the opinion had been rendered, filed a motion for a rehearing and trial of issues of fact by a jury (Record, p. 23), which motion was denied by the court, and thereafter on the eighteenth of June the plaintiffs filed a renewed motion for a rehearing, which was, on the eleventh of January, 1911, finally heard and determined by the court adversely to the plaintiffs (appellants).

Whereupon on the twenty-second of May, 1912, the plaintiffs (appellants) filed a petition of appeal to this court, which was allowed on the twenty-ninth of May, 1912.

During the course of the proceedings and at the close of the plaintiffs' case (Record, p. 34), and in response to a motion on the part of the defendants to dismiss, the court suggested that it would

> "entertain a motion at the end, for them (plaintiffs) to amend their bill as they might deem proper so as to *quiet their title.*"

Whereupon, at the close of the whole case, and in response to the suggestion of the court, the plaintiffs moved the court that they

> "be allowed to amend the prayer of our bill to conform to the proofs and to quiet our (their) title against these respondents and against Mr. Borda as the claimed lessee of the Government of Porto Rico,"

which amendment was *objected to* by counsel for the defendants on the ground that it was "absolutely an unprecedented thing," but being allowed by the court as being in conformity to his suggestion, the defendants took an exception. The motion to amend was granted

> "if the court should be of the opinion after the proofs are filed that the relief to be granted will be proper" (Record, p. 35).

Assignment of Errors.

The appeal in this case was based upon the following assignment of errors filed on the eighteenth of June, 1912 (Record, p. 37):

"I.

"That the court erred in determining the question of title upon a bill for an injunction, and in ordering a survey and quieting the title for the defendants to property for which they had no title.

"II.

"That the court erred in suggesting and allowing the plaintiffs to amend their bill to conform to the proof after the trial of the issues, and the prayer of their bill in such a way as to change the nature and character of the bill from a bill for an injunction to a bill to quiet title.

"III.

"That the court erred in not determining, either for or against plaintiffs, the question of the injunction, and in not sending the question of title to a court of law, to be determined by a jury.

"IV.

"That the court erred in holding and deciding that it had jurisdiction over and concerning the question of title against these plaintiffs, and for the defendants, and in not confining itself to the question of granting or refusing an injunction.

"V.

"That the court erred in holding and deciding that equity had and has jurisdiction to decide a question of title in a suit of this kind when the plaintiffs

were out of possession, and the defendants in possession, it being clearly a case for determination by a suit at law.

"VI.

"That the court erred in determining the question of title upon a bill for an injunction in a suit at equity, thus depriving the plaintiffs of the right of trial by jury and depriving them of their right of 'due process of law.'

"VII.

"That the court erred in quieting the title of the Government of Porto Rico to certain properties to which it had no title when the Government was not a party to the suit and did not in any way appear and ask for the quieting of its title.

"VIII.

"That the court erred in determining this cause from a personal inspection of the geographical conditions of the ground, instead of upon the evidence introduced at the trial of the case, because the conditions of the ground at the time of the personal inspection of the court could have no possible determining influence upon the conditions of the ground at the time the plaintiffs claimed they acquired title.

"IX.

"That the court erred in determining a boundary line between the plaintiffs' and defendants' land solely upon the question of the quality of the soil from his own personal inspection, without taking into consideration that the quality and condition of the ground at the time of the said personal inspection had not, nor has, nor could have had, any bearing or relation whatsoever to the real title of these plaintiffs as derived many years before.

"X.

"That the court erred in so determining this matter and taking jurisdiction in equity over a cause

of this kind, thus depriving the plaintiffs of their right to a trial by jury of the question of title.

"XI.

"That the court erred in holding and deciding that the defendants were the owners and entitled to have their title quieted to the land described in the complaint and claimed by plaintiffs.

"XII.

"That the court erred in holding and deciding that the plaintiffs are not the owners and are not entitled to the possession of the land described in the complaint.

"XIII.

"That the court erred in not considering as sufficient muniments of title the duly recorded dominion title of plaintiffs.

"XIV.

"That the court erred in not holding and determining that the duly recorded dominion titles of plaintiffs were sufficient and proper titles against the claims of a lessee under The People of Porto Rico without title of any kind or description.

"XV.

"That the court erred in overruling the action for a rehearing of this cause, for the reasons set forth in the motion for a rehearing made before the entering of the final decree herein.

"XVI.

"That the court erred in making and entering its final decree in this cause in favor of the defendants and against plaintiffs and appellants."

ARGUMENT.

These alleged errors can be collected into four groups:

First. The error of the court in determining from a personal inspection of the premises after the trial of the case the ownership of the land in question and the boundary line dividing the lands of the plaintiffs from the lands leased by the defendant Borda.

Second. That the court erred in determining a question of title upon a bill in equity, when from the proofs as he in his opinion determined, according to written opinion, they, the plaintiffs, were out of possession and the defendants in possession.

Third. That the court erred in suggesting and allowing an amendment (which was never made) which changed the whole nature and scope of the bill and changed a simple bill for an injunction to a bill to quiet title; and

Fourth. That the court erred in granting affirmative relief to the defendant and quieting the title of *The People of Porto Rico* when there had been *no cross-bill* filed by the defendants, and notwithstanding the fact that The People of Porto Rico was not in any form or manner a party to the suit nor had any interest therein.

The court should have granted the relief prayed for or have dismissed the bill. He was without jurisdiction to go further than this under the pleadings.

We shall consider the errors committed by the court as rearranged in the four groups above in the order in which they appear.

I.

While it is true that both parties agreed to the suggestion of the court that he should view the premises, it was not the intention of either party that he should determine the question of title and boundary line between the plaintiffs and the defendant Borda from such an inspection. Such matters should be, according to proper procedure, determined by the evidence introduced either before a master or the court.

In this case, the court, ignoring the evidence introduced before it, practically determined the whole question upon his inspection of the property (Record, p. 19), admitting, at the same time, that the physical condition of the property may have been greatly altered since the plaintiffs' grantors took title many years ago.

An inspection of the premises unless made in a detailed manner and with the intention of finding out from a geological examination what had been the former condition of the land, would have been of no assistance to the court in determining what had formerly been or had not been a well-defined natural boundary.

II.

In regard to the second group of the alleged errors, that the court erred in determining the question of title. We can see from paragraph V of the amended answer of the defendants that a clear dispute as to legal title was raised. While the plaintiffs did not in any part of their bill allege the possession of the property in question, the defendants did allege the possession thereof uninterrupted and undisputed, thus raising a clear legal question of possession; and had the suit been filed as one to quiet title, the plaintiffs must have failed, because they did not have actual possession at the time the suit was filed. It makes no difference under

the law how possession is lost,—when one claims title to property and seizes it under color of title, the party who has been ousted of possession has but one remedy, the legal one of a suit in ejectment. One cannot bring a suit to quiet title unless he is in actual physical possession of the property at the time. If he has been ousted of that possession and cares to procure the assistance of courts, he must go to a court having *legal* in contradistinction from equitable jurisdiction. The principle is well laid down in the case of

> Whitehead *vs.* Shattock, 138 U. S., 148; 34 Law Ed., 873.
>
> Pomeroy's Equity Jurisprudence, vol. 1, sec. 293 (3d ed.),

where the above-cited case of Whitehead *vs.* Shattock is discussed in connection with two other cases:

> Holland *vs.* Challen, 110 U. S., 15, and
> Gormley *vs.* Clark, 134 U. S., 338, while in
> Blythe *vs.* Hinkley, 84 Federal, 246,

the court goes so far as to hold that a suit to quiet title

> "cannot be maintained when a public administrator is in possession, although both the parties to the suit are out of possession."

In the present case the defendant Borda, lessee, seized and occupied, and constructed a fence enclosing part of the plaintiffs' properties. Thereafter the fence was torn down by the plaintiffs, but reconstructed by the defendants and police officers put on guard. At the time of filing the suit the land was actually in the possession of the defendants through the aid and assistance of the police, but the question of injunction was submitted under agreement, there having been a preliminary restraining order entered by agreement of the parties, which, in effect, left matters in *statu quo* during the pendency of the suit.

Had the bill been amended in accordance with the suggestion of the court (Record, p. 34) to conform to the proofs, it would have clearly shown possession in the defendants at the time of the filing of the bill, and a suit to quiet title could not have been entertained by the court sitting in equity, either by stipulation, motion, or by the court's own order, because a suit of that nature in conformity to the decisions cited above would have been beyond the jurisdiction of the court.

III.

In regard to the third group of alleged errors, the court erred in converting a bill for an injunction, which only asks for the ancillary jurisdiction of a court of equity into a bill to quiet title, there not being any allegations or proof to sustain a bill to quiet title, even after the amendment.

> "An amended bill must not be repugnant to the original nor may it present an entirely new and essentially different case, entirely changing the purposes of the suit. This principle is clear, but difficulties arise in determining what constitutes an essentially different case."
>
> 16 Cyc., 338.

That is the principle laid down in the Encyclopedia of Law and Procedure above quoted, and is so academic that it needs no authority to sustain it, nor does it make, for the purposes of this case, any difference by whom or under what circumstances the amendment is made. The court has jurisdiction to try and determine the case presented to it, but it has no jurisdiction to determine other matters, even if after the proofs are in, by agreement of the parties, the character of the bill should be changed.

In the case of

Sneed *vs.* McCoull, 12 How. (U. S.), 406; 13 Law Ed., 1043,

the court says:

> "After this case had been heard in argument and taken under advisement by the circuit court, the plaintiff petitioned that court to permit him to file a further bill by way of amendment and supplement to the original bill and bill of review previously filed in the cause; and after being heard by counsel upon his petition the court refused to grant the prayer thereof on the grounds that the application was made at too late a period, and that the changes proposed by the plaintiff would *have been in reality the presenting of an entirely new case rather than an amendment to the original bill.* This refusal of the circuit court we hold to have been sound in principle, and it is sustained by the express language and authority of this court. In the case of Valden *vs.* Bodley (14 Peters, 160—10 L. Ed., 400), which declares that although there are cases where amendments may be permitted at any stage of proceeding in the case, as where an essential party has been omitted; yet amendments, which change the character of the bill or answer so as to make substantially a new case should rarely, if ever, be admitted, after the case is set for hearing, *much less after it has been heard.*" * * *

This principle was followed in the cases of the

Electric Accumulator Company *vs.* Brush Electric Company, 44 Federal, 607,

Fields *vs.* Mallony, 78 Mo., 174.

and in the case of

Shields *vs.* Barros, 58 U. S., 130; 15 Law Ed., 159,

the court says near the end of its opinion:

> "nor is a plaintiff at liberty to abandon the entire case made by his bill and make a new and different

case by way of amendment. We apprehend that the true rule on this subject is laid down by the vice-chancellor in Verplank *vs.* Mercantile Insurance Company, 1 Edwards Ch., 47. Under the privilege of amending the party is not permitted to make a new bill. Amendments can only be allowed when the bill is found defective in proper parties, in its prayer for relief, and in the omission or mistake of some fact or circumstance connected with the substance of the case, but not forming a substance any different or for putting in issue new matter to meet allegations in the answer."

Story's Equity Pleading, 884.

"To strike out the entire substance and prayer of the bill and insert a new case by way of amendment leaves the record unnecessarily encumbered with the original proceedings, increases expenses and complicates the suit. It is far better to require the plaintiff to begin anew, to insert a wholly different case is not properly an amendment, and should not be considered within the rules on that subject."

Shields *vs.* Barros, *supra*.

The above case was reversed principally on account of unwarranted amendments, and the court said in conclusion:

"This court regrets that a litigation which has now lasted upwards of thirteen years should have proved absolutely fruitless; but it is under the necessity of reversing the decree of the circuit court; order the cause to be remanded and the original and cross-bills dismissed."

St. Louis, etc., R. R. *vs.* Terrehaut, 33 Federal, 448.

Goodyear *vs.* Brown, Federal cases, 5561.

Boush *vs.* Forte, 3 Mont., 181.

National Bank *vs.* Smith, 17 R. I., 263.

Pieroy *vs.* Beckett, 15 W. V., 451.

In the case of Goodyear *vs.* Brown, which was a patent case, the plaintiff originally asked for an injunction, which was granted. He afterwards asked leave to amend his bill

by adding another plaintiff, alleging that under a certain agreement this other plaintiff was the owner of the exclusive right to make and sell the articles. This amendment was refused. The court stated:

> "Amendment asked for cannot be allowed. That would in effect amount to the institution of a new suit against the defendants materially different from the present one, both as to complaint and rights of action. This exceeds the provisions of amendments as is held by the Supreme Court of the United States at its last term."

The jurisdiction of courts of equity in injunction proceedings is a special jurisdiction and grows out of a necessity for some immediate action to prevent waste and irreparable injury *pending* a suit at law to determine the rights of the parties.

> Erhard *vs.* Boaro *et al.*, 113 U. S., 548; 28 L. Ed., 1117.

In this case Mr. Justice Field, delivering the opinion of the court, says:

> "It was formerly the doctrine in cases of alleged trespass of land not to restrain the use and enjoyment of the premises by the defendant when the title was in dispute, but to leave the complaining party to his remedy at law. A controversy as to title was deemed sufficient to exclude the jurisdiction of the court. In Prilsworth *vs.* Hopton, 6 Ves., 51, which was before Lord Elbon in 1801, he is reported to have said that he remembered being told in early life from the bench 'That if a plaintiff filed a bill for an account and an injunction to restrain waste, stating that the defendant claimed by title adverse to his he stated himself out of court as to the injunction.' This doctrine has been greatly modified in modern times and it is now a common practice in cases where irremediable mischief is being done or threatened tending to the destruction of the substance of the estate, such as the extraction of ore from mines, the

cutting down of timber or the removal of coal, to issue an injunction though the title to the premises be in litigation. The authority of the court is recognized in such cases through its preventative right to preserve the property from destruction *pending legal proceedings for the determination of the title.*"

Gerome *vs.* Ross, 7 John Ch., 315, 332.
Le Roy *vs.* Wright, 4 Sawy. C. C., 530, 535.

It should have been clear to the trial court that the jurisdiction for an injunction was in the case at bar a special and peculiar jurisdiction, and to change or amend a bill for an injunction so as to ask for the quieting of a title would be such an amendment as is distinctly prohibited by the Supreme Court in the cases cited, and would cause a reversal of the decree, inasmuch as it would change the whole character of the case and of the relief asked for, and the court sitting on the original bill would have no jurisdiction to render a decree on the bill amended under such circumstances and in such a manner.

Spelling on Injunction and Other Extraordinary Remedies, vol. 1, sections 1 to 35.

If the court which heard this case originally had believed that there was no such a liability of trespass or irreparable injury or necessity for staying waste, or to prevent a multiplicity of suits, he should have refused the injunction and dismissed the bill, as in the case of Jerome *vs.* Ross, *supra*, but he should not have quieted the title of the defendants and granted affirmative relief to them; he should have left the dispute as to legal title to be determined by a suit at law, thus retaining for the parties their right to a trial by jury, as appears clear from the case of

Freer *vs.* Davis, 59 L. R. A., p. 562.

A suit filed merely for an injunction does not and cannot give to the court any other jurisdiction by amendment or otherwise.

Simpkins' Federal Equity Suit, 2d ed., ch. LXXXII, p. 55.

IV.

In regard to the fourth group of alleged errors to the effect that the court erred in granting affirmative relief to the defendants and quieting the title to The People of Porto Rico, when there had been no cross-bill filed by the defendants, and notwithstanding the fact that The People of Porto Rico was not in anywise a party to the action, nor had any interest therein, we think that the court was entirely without jurisdiction to grant this relief. In the case of

Freer *vs.* Davis, *supra*,

the court says:

> "but in respect to jurisdiction * * * 'while the authorities are in conflict the better rule would be that as consent *cannot confer jurisdiction*, the plaintiff against whom judgment is rendered is not estopped upon appeal or error to show that the court to which he referred had no jurisdiction of the subject-matter of the suit or of the person of the defendant.'"
>
> U. S. *vs.* Huckabee, 16 Wal., 414; 21 L. Ed., 457.

In the above case the court says:

> "Doubtless a bill of equity would lie in a proper court to remove a cloud upon their title, but it is obvious that for any encroachment upon their possessions they had a plain, adequate and complete remedy at law."

In the case cited the lower court gave affirmative relief to the defendant, and the Supreme Court of the United States reversed the decision in these words:

> "Decree in all things reversed for want of jurisdiction in the court below, and the case remanded with directions to dismiss the case, including the original and amended informations and the claims of all the claimants."

In the body of the opinion the following words were used.

> "Tested by these considerations, it must be assumed for the further purposes of this investigation that the title acquired by the plaintiffs, claimants, from the United States was a valid title, and if so, then it is clear that the court below had no jurisdiction of the cause of action alleged in the information, as the plaintiffs if disturbed in their possession of the premises had a plain, adequate and complete remedy at law." * * *
>
> "Usually where a court has no jurisdiction of a case the correct practice is to dismiss the suit, but a different rule necessarily prevails in an appellate court in cases where the subordinate court was without jurisdiction and has given judgment or decree for the plaintiff, or improperly decreed affirmative relief to the claimant. In such a case the judgment or decree in the court below must be reversed else the party which prevailed there would have the benefit of such judgment or decree, though rendered by a court which had no authority to hear and determine the matter in controversy."
>
> Life Insurance Company *vs.* Bailey, 80 U. S., 616; 20 L. Ed., 503.
>
> Hipp *vs.* Babbon, 60 U. S., 271 (19 How.); 15 L. Ed., 633.

In view of the above citations in the case at bar, plaintiffs' only right, therefore, in a court of equity was for an injunction. Had it been a bill originally to quiet title, it must of necessity have been dismissed for lack of jurisdiction. No amendment at any stage of the proceedings by consent or not by consent could have given the court jurisdiction when none existed.

In the case last above cited the court says, quoting from

> Welby *vs.* The Duke of Rutland, 2 Bro., p. C. 39:
>
> "That the general practice of courts of equity in not entertaining suits for establishing legal titles is founded upon clear reasons; and the departing from the practice where there is no necessity for so doing

> would be subversive of the legal and constitutional distinction between the plain jurisdictions of law and equity, and though the admission of a party to a suit is conclusive as to matters of fact, or may deprive him of the benefit of a privilege, which, if insisted on, would exempt him from the jurisdiction of the court, yet no admission of the parties can change the law or give jurisdiction to a court in a cause of which it hath no jurisdiction."

The above would be an answer to any pretense on the part of the defendants that, having asked for the amendment (although same was suggested by the court), they would be estopped now from objecting to anything done under such a motion for an amendment (even though the amendment was never in fact made), but even if plaintiffs were so estopped the motion of the plaintiffs for an amendment did not go so far as to also move the court to quiet the title of the defendants to the land under controversy and of The People of Porto Rico as lessors of the defendant Borda, and in so doing it must be clear that the court acted absolutely without jurisdiction, there having been no cross-bill or any prayer for affirmative relief filed by the defendants. The most the court could have done would have been to dismiss the bill, for to go any further was to go further than a court of equity should or could go and would be an encroachment upon the legal side of the court. No agreement, no stipulation, no amendment, no matter under what circumstances made, could have given the court jurisdiction to have granted affirmative relief to the defendants.

> Mansfield, etc., *vs.* Swan, 111 U. S., 379; 28 L. Ed., 463.

The procedure, which seems to have been adopted by the trial court in the present case, was simply a reversal of the parties. The plaintiffs brought a bill in equity to restrain a trespass, a bill, under the circumstances, clearly within the jurisdiction of the trial court, in equity; the defendants

answered that the plaintiffs are not the owners of the land in question. At once a question of title is raised; in effect the defendants made themselves plaintiffs and ask that the court adjudge that they are the owners and that the possession be granted them of the land, but without filing any cross-bill for this purpose or any prayer for affirmative relief of any kind. This is in effect what was done. The original plaintiffs opposing at every step and finally asking for a jury trial, when they saw the tendency of the court, and this is what the court did: *determined the title and delivered possession to the defendants.* A clear violation of the laws of the United States in regard to equitable jurisdiction, and also a violation of the plaintiffs' rights of the trial by jury and a violation of the sixteenth section of the Judiciary Act.

It resolved itself into a suit to quiet title by the defendants transferred to the position of plaintiffs by the court, contrary to the rule laid down in

Whitehead *vs.* Shattuck, *supra.*

The doctrine laid down in

Washington, etc., R. R. *vs.* The Mayor, etc., of the City of Washington and Joseph H. Bradley *et al.*, 77 U. S., 299; 19 L. Ed., 894—

that affirmative relief cannot be granted to the defendants unless a cross-bill has been filed is clearly applicable to the case at bar. In that case the court says:

> "It is hardly necessary to repeat the axioms in the equity law of procedure that the allegations and proofs must agree, that the court can consider only what is put in issue by the pleadings, that averments without proof and proofs without averments are alike unavailing, and that the decree must conform to the scope and object of the prayer, and cannot go beyond them, *certainly without the aid of a cross-bill the court was not authorized to decree against the complainants the opposite of the relief which they sought by their bills.*"

That is what was done by the decree under consideration.

Wood *vs.* Collins, 60 Federal, 142.

Wright *et al. vs.* St. Louis, etc., R. R. Co., 175 Federal, 845.

Lewis Pub. Co. *vs.* Wyman, 168 Federal, 756.

McKinney *vs.* Big Horn, etc., Co., 167 Federal, 770.

Baldwin *vs.* Liverpool, etc., Insurance Co., 124 Federal, 206.

Tyler *vs.* Savage, 143 U. S., 79; 36 L. Ed., 82.

In

Mansfield *vs.* Swan, 111 U. S., 379; 28 L. Ed., 463,

it was held:

> "This court will, where no motion is made by either party, on its own motion, reverse a judgment for want of jurisdiction, not only in any case where it is shown negatively that jurisdiction does not exist, but even when it does appear affirmatively that it does exist."

The court further goes on to say:

> "It is true that the plaintiffs below, against whose objection the error was committed, do not complain of being prejudiced by it, and it seems to be an anomoly and a hardship that the party at whose expense it was committed should be permitted to derive an advantage from it, but the rule springing from the nature and limits of the judiciary power of the United States is *inflexible* and *without exception* which requires this court of its own motion to deny its own jurisdiction and in the exercise of its appellate power, that of all other courts of the United States in all cases where such jurisdiction does not affirmatively appear in the record on which, in the exercise of that power, it is called to act. On every writ of error or appeal the first and fundamental question is that of jurisdiction, first, of this court and then of the court from which the record comes. This question the court is bound to ask and answer for

itself, even when not otherwise suggested and without respect to the relation of the parties to it."

Freer *vs.* Davis, 59 L. R. A., 563.
Thomas *vs.* Central Ohio R. R. Co., 6 Wal., 134; 18 L. Ed., 765.
Barney *vs.* Baltimore, 6 Wal., 280; 18 Law Ed., 825.
Simpkins, "a Federal equity suit," p. 606.

It should have been apparent to the judge who tried the present case that he had no jurisdiction,

First. To convert this cause, which was simply a bill for an injunction, into a bill to quiet title under an amendment, that was suggested by him, and made at the close of the case, and determine same as such, and,

Second. To grant affirmative relief to the defendants without a cross-bill, and,

Third. To quiet the title of The People of Porto Rico when The People of Porto Rico was not a party to the action, and had filed no bill of any kind asking for relief of any kind, nor had intervened.

We respectfully ask the court, therefore, to reverse the decree entered by the District Court of the United States for Porto Rico and remand the cause with directions to dismiss the bill, thus leaving the plaintiffs the right to an action at law and a trial by jury to determine the right of possession of the lands in controversy.

SAN JUAN, PORTO RICO, *April* 7, 1914.

H. H. SCOVILLE,
JOSEPH ANDERSON, JR.,
Attorneys and Counsellors for Appellants.

W. H. PITKIN, JR.,
Attorney General of Porto Rico.

Received copy of the foregoing brief this ninth day of April, 1914, at San Juan, Porto Rico.

J. H. BROWN,
Attorney and of Counsel for Appellees.

[redacted]

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

EDWIN J. MERCELIS, LEWIS F. GREEN, and JUAN RAMON LORENZO DOMENECH, appellants.	
v.	No. 384.
JOHN A. WILSON, GEORGE W. JONES, E. B. Wilcox, Wenceslao Borda, jr., and M. Le Franc, appellees.	

BRIEF FOR APPELLEES.

STATEMENT.

The case is here on appeal from a decree of the District Court of the United States for Porto Rico, which, in effect, fixed the boundary lines between property of the complainants (now the Appellants), and land leased by Porto Rico to the defendant Borda, and enjoined both sides from setting up title against the respective boundaries so fixed.

FACTS.

On the north shore of Porto Rico, near the Municipal District of Arecibo, are marsh lands known as "Caño de Tiburones" which constitute public lands owned by Porto Rico. The Insular Government leased this swamp to the defendant Borda as part of a reclamation scheme. The defendant Wilson, the Commissioner of the Interior of the Island, together with other officials named as defendants, pro-

ceeded to stake the boundary between these swampy public lands and the private lands lying to the south of it. Thereupon, the complainants, as owners of such land to the south of "Caño de Tiburones" brought this action.

The bill of complaint, after setting forth the facts just briefly outlined, charged the defendants with threatened continuing trespass and appropriation of springs upon complainants' land necessary for watering their stock. The complainants prayed that the defendants (a) be restrained from committing a threatened continuing trespass and from obstructing the use of the springs; (b) be directed to produce evidences of title to their asserted claims over the disputed lands; and (c) there was a general prayer for such relief as may seem appropriate (R. 1–4). The answer was, in effect, a general denial. It is a clear joinder of issue as to what constituted the real boundary line between the lands of the complainants and the swamp lands of the Government leased to Borda. This issue was brought to a focus by Paragraph II of the amended answer (fol. 20). In effect, it narrowed itself to the question whether the northern boundary of the land of the complainants is the meandering line of the submerged and swamp lands, known as the "Caño de Tiburones", or some canal or channel running through the same.

A trial of the issues was held by the court, lasting five or six days, involving a great mass of oral and documentary evidence (fols. 36, 38). At the close of the evidence, in order to make the prayer of the bill

conform to the proof, the complainants requested an amendment of their bill so that the case might be considered as an action to quiet title (fols. 30 and 74). This amendment was granted by the court over the protest of defendants (fols. 37–38). At the complainants' request, therefore, the court considered the action as one to quiet title and disposed of it as such, in an opinion which has all the earmarks of careful and thorough consideration (fols. 32–47; 5 P. R. Fed. Rep. 492). After the complainants found that the court ruled against their contention, in some particulars, as to the proper determination of the boundary line, they moved for a rehearing and also for a trial of certain issues of fact by a jury (fols. 51, 53). Both these motions were denied by the court[1] (fol. 64). The opinion was followed by a decree which, in detail, conformed to the proof and the findings of the court in its opinion. It adjusted the rights of the parties by (a) fixing the boundary between their respective properties, (b) awarding the springs to the complainants, and (c) enjoining the assertion or exercise of any claim by either of the parties as to the property of the other as fixed by the court. (fols. 67 *et seq.*)

The complainants now ask the court to reverse this decree, because it is claimed that (a) the bill should not have been considered as an action to quiet title,

[1] The factors that made a case such as this unsuited for reference to a jury, particularly in a community so unaccustomed to the jury system as Porto Rico, are indicated in *Rubert* v. *Grahame*, 4 P. R. Fed. Rep. 538, 541–542. See also fol. 37.

(b) there was lack of equity jurisdiction, and (c) the decree was based on the personal inspection of the premises by the court below, and not upon the evidence produced at the trial.

ARGUMENT.

We shall argue, on the contrary:

I. The court below was properly enforcing local statutory law, providing for the fixing of boundaries in the nature of an action to quiet title, and was not exercising pure Federal equity jurisdiction.

II. The complainants cannot now object to the action which the court below took as a matter of favor to them, and to the decree which they invited, and which was within the jurisdiction of the court to enter.

III. There is no merit in the claim that the court determined the boundary dispute upon its own inspection and not upon the evidence.

I.

THE COURT BELOW WAS PROPERLY ENFORCING LOCAL STATUTORY LAW PROVIDING FOR THE FIXING OF BOUNDARIES IN THE NATURE OF AN ACTION TO QUIET TITLE, AND WAS NOT EXERCISING PURE FEDERAL EQUITY JURISDICTION.

1. The swamp lands in question had remained unutilized practically from time immemorial. The boundary between these public lands and the adjoining private lands was for practical purposes a matter of indifference, and, therefore, there was no occasion for accurately defining them. Following, however, the lease of these lands to the defendant Borda, and rendering them cultivable, it was natural that con-

troversies should arise, because of the uncertainty of the boundary lines. The result was a great deal of litigation of which this case formed one of a series (fols. 32, 35). The core of the issue in the litigation was the determination of the boundary lines. The complainants contended that a channel near the center of the swamp was the boundary between the swamp and the lands to the south of it. On the other hand, the defendant Wilson, the responsible official of the island, in staking the boundaries, contended that the boundary line between the public swamp and the adjoining private lands can be determined only by a proper location of the meandering line of the submerged lands without any reference to any channel running through part of it (fols. 20 and 39). This is the issue to which the proof was directed and which the court passed upon. In a word, it was an action to fix a disputed boundary and to enjoin the parties from making any adverse claims, after the boundary between their respective lands was fixed.

2. Such was the action we are dealing with here. It was brought, not at all as a matter of general equity jurisdiction, but under the specific provisions of the Porto Rican law.

Section 392 of the Porto Rican Civil Code provides:

> Every owner has the right to demand the fixing of the boundaries of his property, giving notice thereof to the owners of adjoining tenements. (War Department Compilation of the Revised Statutes and Codes of Porto Rico [1913], 638.)

Section 282 of the Code of Civil Procedure provides:

> An action may be brought by any person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim. (War Department Compilation of Revised Statutes and Codes of Porto Rico [1913], 862.)

These provisions are enforceable by the United States District Court for Porto Rico. That court, in effect, is a territorial court and not a Constitutional court of equity (*Romeu* v. *Todd*, 206 U. S., 358, 368–9). Therefore, it has ruled that the technical requirements of a pure equity action in *quia timet* are not applicable to suits of that kind in Porto Rico (*Hernandez* v. *Ochoa*, 4 P. R. Fed Rep., 400, 405). In this decision, the Porto Rican court merely applied the ruling of this Court when dealing with a statute of the very terms as Section 282 of the Code of Civil Procedure (*supra*) in a case coming up from Arizona in its territorial days. The effect of this class of statutes is to extend the scope of an action to determine an adverse claim and to quiet title to cases in which "at common law the plaintiff might have maintained ejectment" (*Ely* v. *New Mexico etc. Railroad Co.*, 129 U. S., 291, 293). It is therefore wholly immaterial whether the complainants were in possession of the disputed lands, or whether the controversy was one that could have been adjusted at law or not.

3. This is peculiarly a case for enforcing, as the court did, section 392 of the Civil Code (fol. 37), of conforming pleadings to proof, and of affording the

relief appropriate to pleadings and proof. For, as the court pointed out in a prior litigation involving the same issue, the whole reclamation scheme of the "Caño de Tiburones" was an important Governmental undertaking and it was the duty of the court so to dispose of this litigation as to embarrass this undertaking as little as possible (*Rubert* v. *Grahame*, 4 P. R. Fed Rep., 538, 542).

II.

THE COMPLAINANTS CAN NOT NOW OBJECT TO THE ACTION WHICH THE COURT BELOW TOOK AS A MATTER OF FAVOR TO THEM, AND TO THE DECREE WHICH THEY INVITED, AND WHICH WAS WITHIN THE JURISDICTION OF THE COURT TO ENTER.

The action of the lower court in enforcing available local procedure was not dictated, however, solely by its own concern for the public interest. It was specifically requested by the complainants and granted over the opposition of the defendants (fols. 37 and 74). There is no complaint by the defendants against whom the ruling was made. The complainants are now objecting to the action which they themselves sought. There is no suggestion that the facts did not warrant the finding of the court. Every internal evidence is to the contrary. In its opinion, the court stated specifically that in this controversy every presumption was to be indulged in favor of the private owners (fols. 45-6). The complainants were decreed the springs which they claimed, and "which are the main cause of the quarrel" (fol. 26). Practically the sole complaint now is that, judged by the criteria of pure equity pleading, the present decree was not warranted. The answer to

this has already been given. This was not a pure equity suit; it was the enforcement of local statutory law on the equity side of the United States Court.

Judged, however, by the niceties of equity pleadings, the complainants are without standing here. Of course, amendments in equity must rest in the discretion of the court determined by the special considerations of each case (*Hardin* v. *Boyd*, 113 U. S., 756). This Court will not look too sharp in passing on the exercise of such discretion in a jurisdiction where a court of equity is so novel an institution as it is in Porto Rico (see *Noble* v. *Gallardo*, 223 U. S., 65). Undoubtedly the amendment for an additional prayer to quiet title was within the structure of the bill and could have been made an additional prayer to the original bill. The subject matter of the bill involved the determination of title. That is what the complainants asked by their bill; that is what they asked specifically by their proposed amendment; that is the request which the court granted them. It would be worse than absurd if they could now defeat the result which they invoked.

Such an unjust result will not be countenanced in the name of equity jurisdiction. A claim precisely similar to the one now made was denied by this Court.

> The plaintiff having voluntarily invoked the equity jurisdiction of the court was not in a position to urge, on appeal, that his complaint should have been dismissed because of adequacy of remedy at law. (*Perego* v. *Dodge*, 163 U. S., 160, 164.)

And this case also disposes of the claim that in quieting title to the land of Porto Rico, without any cross bill, the court acted without jurisdiction. The defendant Borda and the officials of the Island who acted for the lessor, The People of Porto Rico, set up as their defense, as we have seen, that the land in question was owned by Porto Rico and challenged the boundary claim made by the complainants (Par. II, fol. 20). In other words, they joined issue as to what constituted the true boundary line and asked the court to define it. This was the very crux of the case. Therefore, in determining the boundary line, in defining the limits between the land owned by the complainants and the land of The People of Porto Rico owned by the lessee, the court was well within its rights, even when judged as a court of equity. There was no affirmative finding except in so far as it was inseparably connected with the relief sought by the complainants which the court granted. In other words, such affirmative relief as the court granted the defendants was within the terms of the complaint and answer, and allowable without need of cross bill. (See *Perego* v. *Dodge*, 163 U. S., 160, 164, *supra*.)

III.

THERE IS NO MERIT IN THE CLAIM THAT THE COURT DETERMINED THE BOUNDARY DISPUTE UPON ITS OWN INSPECTION AND NOT UPON THE EVIDENCE. (APPELLANT'S BRIEF, P. 12.)

The court did not ignore the evidence, but merely supplemented it by personal observation. This was done at the request of both parties. Presumably

the trial court observed the terms of this request and only carried out the desires of the parties. All we have in the record on the subject is the following from the court's opinion:

> In such utter conflict was this evidence as that counsel for both sides requested and stipulated in open court that the court itself should make a trip to the place in question and see its exact condition, the cost of the trip to be charged with other costs of the case. (Fol. 39.)

That the court did consider laboriously the evidence introduced before it is amply shown by the opinion itself.

CONCLUSION.

The decree should be affirmed.

Respectfully submitted.

FELIX FRANKFURTER,
Law Officer, Bureau Insular Affairs.

WOLCOTT H. PITKIN, Jr.,
Attorney General of Porto Rico.

MAY, 1914.

○

MR. JUSTICE LAMAR delivered the opinion of the court.

On the north shore of the Island of Porto Rico, in the districts of Arecibo and Manati, there is a slough or swamp known as El Caño de Tiburones. It is 12 miles long, of varying width, and was supposed to contain about 7,000 acres, though that was a mere estimate since the exterior boundaries had not been established. Neither had it been authoritatively determined whether it was public land or private property. This uncertainty of boundary and title was the occasion of much litigation. *Catala* v. *Grahame*, 4 P. R. Fed. Rep. 538.

The Legislative Assembly of Porto Rico treated it as belonging to the public and, in December, 1907, leased it to Wenceslao Borda, Jr., with the right to drain, use and occupy the swamp as a sugar plantation. He was put in possession by the Porto Rican police, acting under the orders of the Commissioner and Assistant Commissioner of the Interior and other officials. For the purpose of establishing the boundaries they also took part in a survey which fixed a line running for a distance of about 2 miles through lands claimed by Mercelis and associates. Borda built a fence along this line and thereupon Mercelis and other land owners at once filed a bill in equity in the District Court of the United States for Porto Rico claiming that Borda and the Porto Rican officials had trespassed upon their property and, with force and arms, had taken possession of land on which were located valuable fresh water springs essential to the successful management and operation of their plantations. They alleged further that the trespass and marking of the line had already been the occasion of violent altercations between the respective parties; that the deprivation of the property and especially of the fresh water springs would occasion irreparable damage. For that reason, and to avoid a multiplicity of suits, the court was asked to enjoin Borda and the other defend-

ants from entering upon complainants' land, running lines, digging ditches, erecting fences or committing other trespasses. The defendants filed an answer in which they denied all of the material allegations of the bill and averred that they had only entered upon land belonging to the Government of Porto Rico by virtue of a lease from it. During the trial the defendants insisted that there was no equity in the bill, but the court, following *Hernandez* v. *Ochoa*, 4 P. R. Fed. Rep. 400, and *Catala* v. *Grahame*, 4 P. R. Fed. Rep. 538, held the remedy at law to be wholly inadequate and ruled that in view of the nature of the questions arising under the Spanish law, the case was of a nature which could not be tried by a jury. There was a trial lasting many days in which a multitude of witnesses were examined. There was an irreconcilable conflict in their testimony as to the boundaries of the swamp and whether it belonged to the public or to private individuals. "When the proofs were all in, counsel for the plaintiffs moved for leave to amend the prayer of their bill so as to make it conform to the proofs and, in effect, constitute it a bill to quiet title." The respondents objected, but the court granted the motion.

The evidence is not in the record but the court delivered an opinion (5 P. R. Fed. Rep. 492) in which he set out the facts as found by him. He thereupon made a decree that El Caño de Tiburones was public property; that the boundary of the adjacent land extended to the edge of the swamp and not to the channel or canal in the centre; that the springs, which were the main cause of the controversy, were the property of the plaintiffs; that wherever the line encroached upon high ground it should be relocated so as to run a few feet within the edge of the well defined swamp, and directed that a surveyor should mark and stake the line as designated in the decree. There was a motion and a supplemental motion for a rehearing which were denied and the case was brought to

MERCELIS *v.* WILSON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

No. 68. Submitted November 6, 1914.—Decided January 5, 1915.

While parties cannot give jurisdiction and may sometimes except to an erroneous ruling in their favor, in this case *held* that as the court had jurisdiction both of parties and subject-matter, the party invoking a ruling to change a bill for injunction to one to quiet title, cannot ask a reversal on the ground that the court had no power to grant such a motion.

As this case involved the fixing of a line, when that question was settled it was proper to quiet the title of each party as against the other; and as the findings support a decree in accord with the character of the proceedings asked for by appellant and which prevented a multiplicity of suits, such a decree was properly entered.

5 P. R. Fed. Rep. 492, affirmed.

THE facts, which involve the validity of a decree quieting title to property in Porto Rico, are stated in the opinion.

Mr. Hector H. Scoville and *Mr. Joseph Anderson, Jr.*, for appellants.

Mr. Felix Frankfurter, *Mr. S T. Ansell* and *Mr. Wolcott H. Pitkin, Jr.*, Attorney General of Porto Rico, for appellees.

this court on a record containing sixteen assignments of error, in which appellants complain of the findings against them; insist that the court erred in holding that equity had jurisdiction to decide the question of title, and in not sending that question to a court of law to be determined by a jury. They contend that it was error, in a proceeding involving title to what was claimed to be public land, to enter a decree in a case to which the Island of Porto Rico was not a party; that the court erred in establishing the line and in deciding the question of title adversely to the appellants; and that in a proceeding in which the sole relief prayed was an injunction, he erred in entering a decree in which he neither granted nor denied the injunction.

The original bill prayed for purely equitable relief by injunction, and if the case be treated as a suit in equity, which was to proceed "in the same manner as a circuit court" of the United States (April 12, 1900, c. 191, 31 Stat. 77, 84, § 34), then there was, of course, no right to demand a trial by jury, although, in its discretion, the court could have taken the verdict of a jury on any issue of fact upon which he desired their finding. On the other hand, if it be treated as a proceeding in a statutory court whose jurisdiction and form of procedure were to be in conformity with the Porto Rican law (31 Stat. 84, § 33), there was nothing to prevent the adoption and enforcement of rules by which relief could be afforded through the intervention of a jury or by the court itself. *Ely* v. *New Mexico R. R.*, 129 U. S. 291, 293; *Hornbuckle* v. *Toombs*, 18 Wall. 648, 654.

It is, however, not necessary to separately consider each of the sixteen assignments of error since they relate to rulings none of which is erroneous if the court, acting on the appellant's motion to amend, was justified in treating the proceeding as in the nature of a bill to quiet title. For in that event there was not only no right to a trial by jury but it was not error, as against the parties to the record, to

ake a decree appropriate to such a bill instead of denying granting the prayer of the original Bill for Injunction. The appellants insist, however, that even with their nsent, the court could not, without a cross-bill, make decree quieting the title. In this view of the case they y upon the assignment of error that "the court erred suggesting and allowing the plaintiffs to amend their l to conform to the proof after the trial of the issues, d the prayer of their bill in such a way as to change the ture and character of the bill from a bill for an injunc- n to a bill to quiet title."

The defendants did not appeal and the appellants can- t be heard to complain of the court's action in granting eir own motion. Parties cannot give jurisdiction and ay sometimes except to an erroneous ruling of the court their favor. *Capron* v. *Van Noorden*, 2 Cranch, 126; *ited States* v. *Huckabee*, 16 Wall. 414, 433; *Mansfield* . *Ry.* v. *Swan*, 111 U. S. 379, 382.

But in this case the court had jurisdiction of the subject- tter and of the parties before it, and therefore the pellants cannot ask for a reversal because of a ruling ich, if not actually invoked, was voluntarily acted upon them when they assented that the Bill should be con- rted into a proceeding to quiet title. *Cowley* v. *Northern cific R. R.*, 159 U. S. 569; *Perego* v. *Dodge*, 163 U. S. 160; *ited States* v. *Memphis*, 97 U. S. 284; *Connell* v. *Smiley*, 5 U. S. 335; *Bethell* v. *Mathews*, 13 Wall. 1, 2. The case olved the fixing of a line. When that question was tled it was proper to quiet the title of each party as ainst the other up to the line thus established. The dings support the decree, which not only operated to event the multiplicity of suits referred to in the original , but was in accord with the character of the proceed- s, which the appellants themselves asked the court to ke. The decree is

Affirmed.